S. Hrg. 100-434

ABANDONED SHIPWRECK ACT OF 1987; PRESERVING WETLANDS, HISTORIC, AND PREHISTORIC SITES IN THE ST. JOHNS RIVER VALLEY, FL; AND HIGHWAY RELOCATION AFFECTING THE CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK, GA

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 858

TO ESTABLISH THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS, AND FOR OTHER PURPOSES

H.R. 1983

AUTHORIZING THE SECRETARY OF THE INTERIOR TO PRESERVE CERTAIN WETLANDS AND HISTORIC AND PREHISTORIC SITES IN THE ST. JOHNS RIVER VALLEY, FLORIDA, AND FOR OTHER PURPOSES

H.R. 2121

TO AUTHORIZE AND DIRECT THE NATIONAL PARK SERVICE TO ASSIST THE STATE OF GEORGIA IN RELOCATING A HIGHWAY AFFECTING THE CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK IN GEORGIA

SEPTEMBER 29, 1987

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ABANDONED SHIPWRECK ACT OF 1987; PRESERVING WETLANDS, HISTORIC, AND PREHISTORIC SITES IN THE ST. JOHNS RIVER VALLEY, FLORIDA; AND HIGHWAY RELOCATION AFFECTING THE CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK, GEORGIA

TUESDAY, SEPTEMBER 29, 1987

U.S. Senate,
Subcommittee on Public Lands,
National Parks and Forests,
Committee on Energy and Natural Resources,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Timothy E. Wirth presiding.

OPENING STATEMENT OF HON. TIMOTHY E. WIRTH, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator Wirth. The subcommittee will please come to order.

Today we are having a hearing to receive testimony on three bills before the Public Lands, National Parks and Forests Subcommittee.

The bills are: S. 858, giving the States title to certain abandoned shipwrecks and clarifying the States' management authority over those wrecks; H.R. 1983, to establish the Timucuan Ecological and Historical Preserve in Florida; and H.R. 2121, providing for a grant to be made by the Secretary of the Interior to the State of Georgia to assist the State in relocating a 3.7 mile stretch of highway which currently runs through the Chickamauga and Chattanooga Military Park.

Because of time constraints, we hope to keep the hearing moving as rapidly as possible. For that reason, we will ask our witnesses to please limit their oral testimony to no longer than three minutes. And the record, of course, will remain open for further inclusions and for statements in full to be included.

I would like to take just a moment to comment on one of the bills before us today, H.R. 1983. In establishing the 36,000 acre Timucuan Ecological and Historical Preserve, this act would protect what many consider to be some of the most productive marsh areas in the country. These areas provide critical habitat for a variety of resident and migratory birds, as well as numerous species of fish. The preserve would also include important landmarks and historic structures from the early European settlement of northern Florida.

For a number of years, my old friend, Congressman Charles Bennett, has committed himself personally and professionally to the preservation of this area. And I want to join all of those who have applauded Congressman Bennett for these efforts and to pledge to do everything that I can to see this measure enacted into law this year.

At this point I will place copies of these bills in the hearing record, and the record, as I noted earlier, will remain open for two weeks to receive additional comments and material.

[The texts of S. 858, H.R. 1983 and H.R. 2121, and a statement from Senator Nunn follow:]

II

100TH CONGRESS
1ST SESSION

S. 858

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 26 (legislative day, MARCH 24), 1987

Mr. BRADLEY (for himself, Mr. PELL, Mr. HECHT, Mr. GRAHAM, Mr. BENTSEN, Mr. STAFFORD, Mr. INOUYE, Ms. MIKULSKI, Mr. CHILES, Mr. LAUTENBERG, Mr. CHAFEE, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(1) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(2) included in the range of resources are certain abandoned shipwrecks.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "embedded" means firmly affixed in the submerged lands or in coralline formations;

(2) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(3) the terms "public lands" and "Indian lands" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa–470ll);

(4) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(5) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(6) the term "submerged lands" means the lands—

(A) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(B) of Puerto Rico, as described in section 8 of the Act of March 2, 1917 (48 U.S.C. 749); and

(C) beneath the navigable waters of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, including inland navigable waters and waters that extend seaward to the outer limit of the territorial sea.

SEC. 4. RIGHTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources.

SEC. 5. GUIDELINES.

The Advisory Council on Historic Preservation, established under section 201 of the Historic Preservation Act (16 U.S.C. 470l), in consultation with appropriate public and private sector interests (including archeologists, salvors, sport divers, historic preservationists, and State Historic Preservation Officers) shall publish, within six months after the date of enactment of this Act, advisory guidelines for the protection of historic shipwrecks and properties. Such guidelines shall be available to assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this Act in such manner as will be consistent with the policies stated under section 4.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this subsection. The Secretary of the Interior shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (3).

(b) TRANSFER OF TITLE TO STATES.—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(c) EXCEPTION.—Any abandoned shipwreck in or on the public lands of the United States (except the Outer Continental Shelf), is the property of the United States Government.

(d) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any

State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, or other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any suit filed before the date of enactment of this Act.

II

100TH CONGRESS
1ST SESSION

H. R. 1983

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JUNE 23), 1987

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

Authorizing the Secretary of the Interior to preserve certain wetlands and historic and prehistoric sites in the St. Johns River Valley, Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FORT CAROLINE NATIONAL MEMORIAL

SECTION 101. AMENDMENTS OF 1950 ACT.

The Act entitled "An Act to provide for the acquisition, investigation, and preservation of lands to commemorate the historic Fort Caroline settlement, Saint Johns Bluff, Florida", approved September 21, 1950 (64 Stat. 897), is amended as follows:

(1) Section 2 is amended by adding the following after the final period: "Such historical park shall serve as the principal interpretive center and administrative facility for the ecological, historic, and prehistoric resources made available under this legislation. In furtherance of the interpretive and administrative functions referred to in the preceding sentence, the Secretary shall construct and maintain appropriate museum facilities for the display of important artifacts and materials that illustrate the history and prehistory of the region.".

(2) Section 3 is repealed, and sections 4 and 5 are redesignated as sections 3 and 4, respectively.

(3) Section 4, as so redesignated, is amended by striking out the phrase ", not to exceed $40,000,".

TITLE II—PRESERVATION OF ST. JOHNS RIVER VALLEY ECOLOGICAL AREA AND PROTECTION OF SIGNIFICANT HISTORIC ASSETS

SEC. 201. TIMUCUAN ECOLOGICAL AND HISTORIC PRESERVE.

(a) Establishment.—There is hereby established in the St. Johns River Valley, Florida, where the Timucuan Indians lived in prehistoric and historic times, the Timucuan Ecological and Historic Preserve (hereafter in this Act referred to as the "Preserve"). The Preserve shall comprise the lands, waters, and interests therein within the boundaries generally depicted on a map of Duval County, Florida, entitled "Timucuan Ecological and Historic Preserve" numbered NA-TEHP 80,003-A and dated July 1987. The map shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The Secretary of the Interior may make minor revisions in the boundary of the Preserve in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965. The Preserve shall also include within its boundaries all that land consisting of approximately 500 acres adjacent to Fort Caroline National Memorial and known as the Theodore Roosevelt Preserve, being land formerly owned by one Willie Brown and donated by him to The Nature Conservancy.

(b) LAND ACQUISITION.—The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to acquire lands and interests therein within the Preserve by donation, purchase with donated or appropriated funds, or exchange, but no lands other than wetlands or interests therein may be acquired without the consent of the owner. For purposes of this subsection, the term "wetlands" has the same meaning as provided by section 3 of the Emergency Wetlands Resources Act of 1986. Lands, interests in lands, and improvements thereon within the boundaries of the

Preserve which are owned by the State of Florida or any political subdivision thereof may be acquired only by donation or exchange.

(c) ADMINISTRATION.—The Secretary shall administer the Preserve in such a manner as to protect the natural ecology of its land and water areas in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4). The Secretary shall permit boating, boating-related activities, hunting, and fishing within the Preserve in accordance with applicable Federal and State laws. The Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety.

SEC. 202. PROTECTION OF SIGNIFICANT HISTORIC ASSETS.

The Secretary, with the consent of the owners thereof, may acquire by donation or purchase with donated funds the following properties or sites of significant historic interest in Duval County, Florida:

(1) Spanish sixteenth century forts San Gabriel and San Estaban.

(2) Spanish eighteenth century fort Dos Hermanas.

(3) English eighteenth century forts at Saint Johns Bluff and Fort George Island.

(4) Spanish sixteenth and seventeenth century mission San Juan del Puerto.

(5) Site of the American Revolutionary War battle of Thomas Creek.

(6) The Zephaniah Kingsley plantation, with its eighteenth and nineteenth century buildings.

(7) The Spanish American War fortification on Saint Johns Bluff.

(8) The confederate fort known as the Yellow Bluff Fort State Historic Site.

SEC. 203. INTEGRATED ADMINISTRATION AND INTERPRETATION.

Any properties of historic interest acquired under section 202 shall become part of the Preserve established under section 201. The Secretary shall administer such properties in accordance with a plan that integrates the administration and interpretation of the ecological values of the Preserve and the historical values of the sites so acquired and the historical features of Fort Caroline. Such administration and interpretation shall be conducted through the facilities and staff of Fort Caroline National Memorial consistent with section 2 of the Act of September 21, 1950 (64 Stat. 897).

Passed the House of Representatives July 21, 1987.

Attest: DONNALD K. ANDERSON,

Clerk.

II

100TH CONGRESS
1ST SESSION

H. R. 2121

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JUNE 23), 1987

Received; read twice and referred to the Committee on Energy and Natural Resources

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AN ACT

To authorize and direct the National Park Service to assist the State of Georgia in relocating a highway affecting the Chickamauga and Chattanooga National Military Park in Georgia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ASSISTANCE FOR HIGHWAY RELOCATION.

(a) ASSISTANCE FROM DEPARTMENT OF THE INTERIOR.—For purposes of reducing damage to natural and historic resources from highway traffic within the Chickamauga and Chattanooga National Military Park and for purposes of improving highway safety within the park, the Secretary of the Interior shall provide a grant to the State of Georgia to assist the State in relocating a 3.7 mile section of Highway 27 which passes through the park. The assistance shall be provided upon application of the State if the Secretary of the Interior, acting through the Director of the National Park Service, approves the design and siting of the highway at a location generally outside the western boundary of the park.

(b) FEDERAL SHARE.—The assistance provided by the Secretary of the Interior under subsection (a) shall not exceed 75 percent of the total costs of relocating the 3.7 mile section of highway referred to in subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not more than $30,000,000 for assistance under subsection (a). Such funds shall remain available until expended.

Passed the House of Representatives July 21, 1987.

Attest: DONNALD K. ANDERSON,
Clerk.

SAM NUNN, GEORGIA, CHAIRMAN

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United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

September 29, 1987

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands,
  National Parks, and Forests
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today your subcommittee is holding a hearing to consider H.R.2121, a bill to authorize and direct the National Park Service to assist the State of Georgia in the relocation of U.S. Highway 27. I support H.R.2121 and recommend that your committee give it favorable consideration.

At present, Highway 27 runs through the Chickamauga National Military Park carrying 15,000 vehicles per day through the historic site. The Georgia Department of Transportation favors widening the highway to four lanes along the existing route; however, the Park Service and several Civil War historical groups are opposed to this widening. The legislation you are presently considering would authorize funds for the relocation of Highway 27 around the park.

I thank you for your favorable consideration of this most important issue to the State of Georgia. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

Sam Nunn

Sam Nunn

Senator **Wirth**. Our first witnesses today are the Members of the United States Congress. And Congressman Bennett is with us today. Congressman Bennett, thank you very much for being here. We are delighted to have you and look forward to receiving your testimony.

STATEMENT OF HON. CHARLES BENNETT, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA, RELATING TO H.R. 1983

Mr. **Bennett**. Thank you very much, Mr. Chairman. I know your time is tight, so I will submit my entire statement for the record and brief it by saying that you have well discussed the Timucuan Preserve.

It has three parts to it. The first is sort of housekeeping things with regard to the Fort Caroline National Memorial.

The second authorizes the acquisition of several historic sites. All of these have to be acquired with the consent of the owner. And we have a good deal of donated funds available to do this, including a 16th Century fort, San Gabriel and San Estaban, where a battle took place between the Spanish and the French in 1568.

Other measures of importance are Fort Dos Hermanas, a Spanish fort, an English fort, a Spanish American War fort, a Confederate fort and other things of this nature.

Now, the important part of this legislation is with regard to this marshland. The proposed Timucuan Preserve consists of approximately 35,000 acres, of which 90 percent are wetland. The Florida Department of Natural Resources last year said of these natural assets: "This part of Florida is perhaps best known for its beaches, dunes and mature maritime forests, and for the virtually untouched network of salt marshes and tidal creeks. However, it is the contribution of these wetlands to estuarian productivity that makes the area of the utmost importance for preservation."

We passed legislation in the past that has to do with national preserves. House Report 93-502 defined national preserves as "areas of land and/or water which may vary in size, but which possess within their boundaries exceptional values or qualities illustrating the natural heritage of the nation. Such areas would often be characterized by significant scientific values, including, but not limited to, ecological communities illustrating the process of succession, natural phenomena or climax communities. In addition they could be characterized by habitat supporting a vanishing rare or restricted species, a relict flora or fauna persisting from an earlier period. Areas where historical events took place would contribute to the values of the preserve and should be managed in a manner which will maximize the natural and historical values." That is precisely what this legislation is.

And, Mr. Chairman, unless there are some questions, that is my testimony. I will offer the entire testimony for the record.

Senator **Wirth**. That will be included in full in the record.

[The prepared statement of Mr. Bennett follows. Additional material relating to H.R. 1983 appears in the appendix.]

STATEMENT BY REPRESENTATIVE CHARLES BENNETT
BEFORE THE
SENATE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

SEPTEMBER 29, 1987
on H. R. 1983

MR. CHAIRMAN, I thank the committee for holding a hearing on H.R. 1983. This bill establishes the Timucuan Ecological and Historic Preserve, named after the Timucuan Indians who inhabited the area in historic and prehistoric times. It has three main parts. I will discuss them in reverse order of their importance.

First, the bill modifies the existing Fort Caroline National Memorial. It authorizes appropriate additional museum facilities for the display of important artifacts, which will be of particular importance when this bill becomes law. I am confident that this museum can be built through private donations.

Second, H.R. 1983 authorizes the acquisition of several important historical sites. They are:

(1) Spanish 16th century forts San Gabriel and San Estaban. These guarded the mouth of the St. Johns River and saw French and Spanish combat in 1568.

(2) Spanish 18th century Fort Dos Hermanas. This site on the northern tip of the little Talbot Island, dates from the 18th century, and formed a part of the Spanish defenses against American expansionist efforts to annex Florida to the United States.

(3) An English 18th century fort at St. Johns Bluff, Fort St. George on Fort George Island, was built by Oglegthorpe in the 1730-1740 decade to

assert British title in Florida lands claimed by and as a base for British attack on St. Augustine in 1740.

(4) Spanish 16th and 17th century mission, San Juan del Puerto. This 16th century mission was the capitol site of the Catholic Church in what is now the United States. Father Pareja, who is being considered for sainthood, was the Principal for San Juan del Puerto and wrote numerous works in the Timucuan language. The site is on the National Register of Historic Sites.

(5) The 18th and 19th century buildings on the Zephaniah Kingsley Plantation. This complex is in excellent condition and includes 1791 tabby plantation buildings. This site contains the only intact remains of the plantation economy on which Colonial Florida was based in the late 18th and 19th centuries. It is currently a state park, but the state indicated its interest in turning this over to the federal government upon enactment of H.R. 1983. The Kingsley Plantation is a more imposing asset than many in existing national parks. It would be a real jewel for the National Park Service. It is on the National Register of Historic Places.

(6) The Spanish American fortification of St. Johns Bluff. This is a substantial concrete gun emplacement owned by a trust that seeks its preservation. This is an example of military architecture and construction of the period and reflects the awakening of the concern of coastal defense that the war engendered.

(7) The Confederate fort on Yellow Bluff.

The third and most important part of the bill is its preservation of wetlands. The proposed Timucuan Preserve consists of approximately 35,000 acres, of which 90-95% are wetlands.

The Florida Department of Natural Resources last year said of these natural assets: "This part of Florida is perhaps best known for its beaches, dunes, and mature maritime forests, and for the virtually untouched network of salt marshes and tidal creeks. However, it is the contribution of these wetlands to estaurine productivity that makes this area an important candidate for preservation."

This legislation is important for the reasons outlined, but it should be noted that, considering what the National Park Service would be acquiring and the value to the public, the expenses would not be very great. I do not envision a great amount of money being needed to acquire the lands in this preserve by the federal government. At least half of the 35,000 acres in the proposed preserve is now owned by the state, which has indicated its willingness to part with the land upon enactment of the bill.

As for the historic sites, they could only be acquired by donation. I am confident that we could get them, and in fact, a number have already been promised -- free of charge.

All in all, this is a very special area. I do not think there is in the United States any other area so closely compacted with great history and ecological values. The majority of the historic sites and the wetlands will be obtained without a single dime being spent.

People owning uplands within the bill perimeters will not be required to sell upland or have any cloud over the title to their land. They can continue to inhabit the uplands and remain in their homes or they can sell to whomever they want with no cloud on their title. They could sell to the National Park Service, if appropriations are made, but only if they wish to.

Speaking of the uplands of the bill, before I complete this statement, I would like to briefly touch on Fort George Island, which is included in the map perimeters of H.R. 1983, as passed by the House. This was done at the request of some of the homeowners on the island. Uplands on Fort George

Island could not be condemned and no one would be forced to give up land or to sell their land to the federal government.

A large housing development has been envisioned for the island, but this bill would in no way be able to stop the development or put restrictions on it should it go forward.

I do have hopes that the undeveloped parts of the island will someday be acquired for public use, perhaps with state and local funding, and conceivably placed in the Timucuan Preserve. I think that would be the best outcome.

I personally do not think that the land can stand the huge development envisioned there, and although this bill cannot stop it, I am very hopeful that something can be put together whereby this land would be protected as either a national or state park. The land on the island is extremely sensitive environmentally. In fact, city water conservation officials have already found evidence of salt water intrusion in the drinking water on Fort George Island, and have recommended water rationing on the island. The island can barely contain the number of people who are there on it now, and to put large numbers more there would be a disaster to the ecology.

Billy Arnold, of the Friends of Fort George Island, wanted to testify here today, but was unable to because of courtroom duties in Florida. However, I include for the hearing record a statement by Mr. Arnold in favor of Fort George Island's inclusion in H. R. 1983, along with a petition by landowners on Fort George Island who also support the island's inclusion in the preserve.

I would like to include statements from the Supervisor of Historic Sites for the State of Florida, letters of support from Jacksonville Mayor Hazouri, Attorney General Bob Butterworth, and other various letters of support for

H. R. 1983. I also submit another petition of Jacksonville citizens supporting this bill.

Wetlands constitute only a small percentage of the land area of the United States, and are estimated to have been reduced by half in the contiguous states since the founding of our country. H. R. 1983, we have a chance to do something tangible in the effort to put las year's Wetlands Act into action, and move toward the protection of valuable U. S. wetlands.

There are 12 National Preserves now in existence, and 7 of them border existing National Park facilities. The proposed Timucuan Preserve, bordering Fort Caroline National Memorial, clearly fits the criteria for a National Preserve. House Report 93-502 defined National Preserves as "areas of land and/or water which may vary in size, but which possess within their boundaries exceptional values or qualities illustrating the natural heritage of the nation. Such areas would often be characterized by significant scientific values, including, but not limited to, ecological communities illustrating the process of succession, natural phenomena or climax communities. In addition they could be characterized by a habitat supporting a vanishing, rare or restricted species, a relict flora or fauna persisting from an earlier period; or large concentrations of wildlife species. . . . Areas where historical events took place would contribute to the values of the preserve and should be managed in a manner which will maximize bot the natural and historical values."

In conclusion, the bill is a very good piece of legislation, and very cost-effective. It clearly fits the above discription. There are very few bills of this magnitude with the great history and ecological values that could be obtained for the amount of money that this can be obtained for. I thank the Committee for holding the hearing today, and I would certainly appreciate this bill passed through the Senate.

Senator WIRTH. I want to note also for the record that Congressman Bennett and I have discussed this at great length. And from my perspective, I think this bill makes an enormous amount of sense and would make a great contribution to the preservation activities of all of us in the country, in addition to those of north Florida. And I hope that we can move this as expeditiously as you and I would both like to see it move.

Mr. BENNETT. Thank you. You have been very kind.

You know, I do have another bill. If I was quick like I was on that one, could I do this one too.

Senator WIRTH. Absolutely. Without objection, Congressman Bennett will be recognized on his second piece of legislation.

STATEMENT OF HON. CHARLES BENNETT, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA, RELATING TO S. 858

Mr. BENNETT. I am grateful for your allowing me to speak on this bill. This is the Abandoned Historic Shipwreck bill introduced by Senator Bradley.

The bill is very simple. It transfers ownership and management authority of certain abandoned, historic shipwrecks to the States. Under this bill, shipwrecks that are either embedded or submerged or in coralline formations are eligible for the National Register of Historic Places would be under State ownership and management for salvage. This would take the place of admiralty court jurisdiction which is oriented more toward bringing up the wrecks than toward protecting them and their historic contents. State ownership would allow for a more balanced approach to deal with abandoned historic shipwrecks addressing the competing goals of salvage and preservation.

Having said this, I would like to specifically speak to the issue of diving access. State governments would have no motive to prohibit diving. States have a financial stake in allowing diver access to shipwrecks. Of course, there are reasons when and places where diving access might be restricted, such as public safety and environmental protection. Those would be reasonable, but to think that the States would seek to alienate divers by placing overly burdensome restrictions is unthinkable.

Actually this legislation provides for—not at government expense, but provides an encouragement to States to create State parks with regard to some of these historic shipwrecks.

This is a good bill. It allows States management authority, thereby cutting down expensive litigation, guaranteeing that historic shipwrecks will be handled not by litigation, but by elected officials, as it should. The entire archaeological community, historic preservationists, the National Governor's Association, the Coastal States Alliance, the Diving Equipment Manufacturer's Association and the Reagan Administration, to name a few, support this bill.

I would like to include in the record some additional materials with both of these bills—that is, petitions and statements of that kind, if I could.

Senator WIRTH. Without objection, that will be included in full in the record.

[The prepared statement of Mr. Bennett follows. Additional materials relating to S. 858 appears in the appendix.]

Statement by Representative Charles Bennett
Before the
Senate Subcommittee on Public Lands, National Parks and Forests
September 29, 1987
On S-858
The Abandoned Historic Shipwreck Act

Mr. Chairman: I am grateful for your allowing me to speak in support of the Abandoned Historic Shipwreck Act, introduced by Senator Bill Bradley. I have a long interest in this subject matter.

The bill is very simple; it transfers ownership and management authority of certain abandoned historic shipwrecks to the states. Under this bill, shipwrecks that are either embedded in submerged lands, or corraline formations, or eligible for the National Register of Historic Places, would be under state ownership and management for salvage. This would take the place of admiralty court jurisdiction, which is oriented more toward bringing up the wrecks than toward protecting them and their historic contents. State ownership would allow for a more balanced approach to dealing with abandoned historic shipwrecks, addressing the competing goals of salvage and preservation, allowing both goals to be met whenever possible.

Having said this, I would like to specifically speak to the issue of diving access. State governments would have no motive to prohibit diving. States have a financial stake in allowing diver access to shipwrecks. Of course, there are reasons when and places where diving access might have to be restricted, such as for public safety or environmental protection. This is only reasonable. But to think that states would seek to alienate divers by placing overly burdensome restrictions on recreational diving on abandoned shipwrecks is obviously nonsense. As I said, there would be no motive. Besides that, the legislation encourages diving exploration and even underwater state parks.

Sad to say, but it is doubtful than any historic shipwrecks will be left to explore within the next decade. Divers should therefore welcome this legislation.

Those of us supporting this legislation have a deep and abiding interest in protecting pieces of the past for future generations to enjoy. However, we do not seek to outlaw all private salvage. Clearly, there's no way governement, be it state or federal, can be expected to find all the abandoned historic wrecks in existence. That's where the private salvor, the entrepreneur, comes in. But, states should be able to have a clear and undiluted input on shipwrecks found in their waters. Historic artifacts in water are no different from those found on land. If an historic artifact were found on the dry land of a state there's no way it would be allowed to be degraded. The same should go for artifacts in the water.

This is a good bill. It allows states management authority, thereby cutting down expensive litigation and guaranteeing that historic shipwrecks will be handled not by litigation but by elected officials, as they should be.

The entire archaeological community, historic preservationists, the National Governors Association, the Coastal States Alliance, and the Reagan Administration, to name a few, support this bill.

I am glad we now finally have our chance to plead our case before the Senate. I am hopeful that this committee will move this legislation to the Floor of the Senate. S. 858 is clearly in the national interest. It should be law.

Senator **Wirth**. As a diver as well, I am very encouraged by this legislation. I hope we can have that enacted very rapidly.

Mr. **Bennett**. Thank you very much.

Senator **Wirth**. Thank you, Congressman Bennett. And I would hope that you and perhaps Congressman Darden later might want to come up and join us. If you would like to do so, please feel free to do so.

Mr. **Bennett**. Thank you.

Senator **Wirth**. Our next witness this morning is Congressman Buddy Darden, also a Member of the United States House of Representatives. Congressman Darden, thank you very much for being here, and we greatly appreciate your coming over to this side of the Hill and giving us a hand. We need all the help we can get.

STATEMENT OF HON. GEORGE (BUDDY) DARDEN, A U.S. REPRESENTATIVE FROM THE STATE OF GEORGIA

Mr. **Darden**. Thank you very much, Senator.

I want to say what a pleasure it is to come over to the Senate and see you in your present capacity. This is my first time I have visited the Senate and appeared before you. And I want to say how welcome it is to see a friendly and familiar face.

Mr. Chairman, the Chickamauga and Chattanooga National Military Park located in my district in northwest Georgia is the oldest and largest such park in the United States. It was the site of a major Civil War battle of 1863 that involved almost 35,000 casualties. This was a battle between Union and Confederate forces fought primarily over the LaFayette Road, which is now the site of U.S. Highway 27.

A 3.7 mile, two-lane section of Highway 27 passes through the park and is a source of tremendous traffic congestion primarily due to the large number of commuters who travel the road. The Georgia Department of Transportation estimates that 15,000 vehicles pass through the park each day. Only 10 percent of the exceptionally heavy traffic that passes through the park can be attributed to those park visitors.

Senator, Highway 27 is the primary north-south route linking Chattanooga, Tennessee with communities in north Georgia such as Rossville, Fort Oglethorpe, Chickamauga, LaFayette and cities as far away as Summerville and Rome.

Highway 27 has been expanded or is in the process of being expanded to four lanes or more, both north and south of the park. This, of course, causes a traffic bottleneck which, of course, is damaging the historical integrity of the park and poses an increased risk to the safety of the park visitors.

Mr. Chairman, since 1934 a second battle of Chickamauga has been fought over whether to widen the existing roadway or to bring a bypass around the park. Now, the State of Georgia for many years has offered to widen the existing roadway for free at a cost of about $4 million. However, the National Park Service and even James Watt ruled that the road had to go around the park and to protect the park. And as I have told my counterparts in State and local officials that if James Watt wouldn't allow the road to be widened through the park, then we might as well get on with the business and go around the park.

Consequently, Mr. Chairman, the only problem is the cost. It is going to cost about $30 million to go around the park, the western area, rather than the $4 million it would cost to go through the park that the State of Georgia has agreed to pay.

Therefore, I introduced, in consultation with Senator Fowler, Senator Nunn, the head of the Federal Highway Administration, Director Mott and others, a bill which has now passed the House which authorizes the Department of the Interior to assist the State of Georgia up to 75 percent of the cost and up to a ceiling of $30 million to go around the western part of the park.

I want to point out to you that Georgia Senators Nunn and Flower have all agreed that this is the route to go. It has passed the House. This is a consensus bill. We think it is one that is needed very much, and it would alleviate a problem that we have in northwest Georgia for which there is no other solution.

I would point out in conclusion, Senator, that this is a unique situation. All the testimony has shown that this is not something that is going to occur in every national park throughout the country. But this valuable park can only be protected by the expenditure of these funds. And I respectfully request that your subcommittee act favorably on this bill so we can go on with the business of eliminating this very serious problem and finally resolving the second battle of Chickamauga. And hopefully, we in the South will be as successful in winning this battle as we were the one in 1863.

Thank you.

[The prepared statement of Mr. Darden follows:]

Subcommittee on Public Lands, National Parks and Forests
of the Senate Committee on Energy and Natural Resources

September 29, 1987

Hon. George (Buddy) Darden
Member of Congress
Seventh District, Georgia

The Chickamauga and Chattanooga National Military Park in my district in northwest Georgia is the oldest and largest military park in the nation. It is the site of a major Civil War battle of 1863 that involved almost thirty-five thousand casualties. This battle was fought primarily over the LaFayette Road which is now the site of U.S. Highway 27.

When the park was established in 1890, there had been hardly any changes in the fields, houses, and roads at Chickamauga since the battle. In fact, many veterans of the battle planned and placed the historical markers and monuments in the park. So, today, the park is as close to its 1863 appearance as possible. The park offers unparalleled opportunities for military and historical study and is used by the United States Army as a training site for officers.

A 3.7 mile, two-lane section of Highway 27 passes through the park and is the source of tremendous traffic congestion, primarily due to the large number of commuters who travel the road. The Georgia Department of Transportation estimates that some 15,000 vehicles a day travel on this road through the battlefield. Only 10 percent of the exceptionally heavy traffic that passes through the park can be attributed to park visitors.

Highway 27 is the primary North-South route linking Chattanooga, Tennessee with communities in north Georgia such as Rossville, Fort Oglethorpe, Chickamauga, LaFayette, and as far away as Summerville and Rome.

The traffic bottleneck in the park detracts from the historical integrity of the battlefield and poses an increased risk to the safety of park visitors. Not only does the park suffer from this situation, but the growth of the communities adjacent to the park in Walker and Catoosa Counties is severely hampered by the frustrating traffic-flow problem.

This particular situation is very unique. The road itself was the object of the Battle of Chickamauga, thus making it an integral part of the historical interpretation of the park today. There is no other park in the nation facing such a conflict between the transportation needs of neighboring communities and the need to preserve a primary transportation route as a historical part of the park.

Since 1934, state, federal, and local officials have recognized the need for improvements to this portion of Highway 27. For years, the Georgia Department of Transportation had sought permission to widen the existing road through the park to four lanes. The highway has already been widened both north and south of the park, and the bottleneck through the park is becoming more of a critical situation each day.

In 1985 I invited the director of the National Park Service, Mr. William Penn Mott, to visit the Chickamauga Battlefield to determine the best solution to the traffic problem in the park. After making a very thorough examination of the area, Director Mott determined that the widening of the road would be detrimental to the historical integrity of the park, and his decision prohibited any possible widening of the existing road.

The state had been willing to bear the full cost of widening the road. However, the bypass of the park suggested by the National Park Service is estimated to cost almost thirty million dollars -- or ten times the amount it would cost to widen the existing road. This is a tremendous amount to expect the local communities or the state to bear alone; the annual budget of Walker County south of the park is only eight and a half million dollars.

On April 8, 1987, I met with Senators Sam Nunn and Wyche Fowler of Georgia, Director Mott, representatives of the Federal Highway Administration, the Georgia transportation commissioner, and state and local elected officials to discuss the action necessary to resolve this problem. At that meeting, I suggested the introduction of the legislation this subcommittee is now considering. All those present at the meeting -- federal, state, and local officials -- agreed that this bill is the most acceptable solution.

H.R. 2121, as amended in the House Interior and Insular Affairs Committee and passed by the House of Representatives, authorizes the Department of the Interior to provide 75 percent of the funds necessary to relocate Highway 27 around the park, with the State of Georgia providing the remainder of the funds. The exact location of the bypass is to be determined by the Georgia Department of Transportation in cooperation with the National Park Service.

My original proposal, however, would have authorized the Department of the Interior to provide 90 percent of the cost of the bypass. The House Subcommittee amended the bill by reducing the federal share of the cost to 75 percent. The amended bill was favorably reported without opposition in the committee and unanimously passed by the House of Representatives on July 21, 1987.

It is appropriate that the Department of the Interior should bear a major portion of the cost of this project since its purpose is the protection of a unit of the National Park Service.

H.R. 2121 has the support of conservation groups, military historians, and all the state and local officials who have been involved in this situation.

Taking no action would only allow the nation's oldest and largest military park to continue to deteriorate due to the increasing amount of traffic that passes through it each day. H.R. 2121 will help protect one of our nation's most important historic treasures while ensuring the continued vitality of the communities in northwest Georgia.

I urge the favorable consideration of this measure by the Senate Subcommittee on Public Lands, National Parks and Forests.

Senator **Wirth**. Thank you very much, Congressman Darden. And Senator Fowler and Senator Nunn have both spoken to us about this legislation, and as you point out, are very supportive of your efforts in this area. And we hope also that we can move this very expeditiously.

Let me ask my colleague from New Jersey, Senator Bradley, if he has any questions or comments that he might like to make.

Senator **Bradley**. No, I don't, Mr. Chairman.

Mr. **Darden**. Thank you very much.

Senator **Wirth**. Thank you.

Mr. **Darden**. And I ask, of course, that a copy of my formal statement be included in the record.

Senator **Wirth**. We will include your statement in the record in full.

Thank you very much for joining us. Our third witness this morning is the distinguished senior citizen from the great State of Florida. Senior Senator. Did I say senior citizen? [Laughter.]

My apologies. It's our esteemed colleague from the great State of Florida.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator **Chiles**. I answer to both of those, Mr. Chairman.

Senator **Wirth**. Senator Chiles, thank you very much for being with us.

Senator **Chiles**. Thank you. It is a pleasure to be here today to testify on legislation to enhance the protection and interpretation of important historic sites and to preserve critical wetlands in Duval County, Florida.

This region of northern Florida provides a remarkable rich tapestry of the history of European settlement in North America, but it is also one of the fastest growing regions in the country. And we have to take deliberate steps to preserve these sites and the surrounding wetlands from encroaching development.

As you know, my colleague and good friend, Charlie Bennett, has secured the passage of this bill in the House. Congressman Bennett, in addition to his outstanding work in the Congress, is also a very well-respected historian who has dedicated years of studying these sites. He has published some five books about the historical significance of this particular area.

Mr. Chairman, I certainly recognize the scarce resources available for land acquisition, but I believe it is important to note that a large portion of these lands are going to be donated to the Department of Interior for the inclusion in the Timucuan Ecological and Historic Preserve.

Among the parcels already expected for donation are the site of the American Revolutionary battle of Thomas Creek, two Spanish 16th Century forts, and an 18th Century English fort. In all, the preserve will offer protection to seven historically significant sites.

Mr. Chairman, it is important that we not allow these places which carry the rich history of our past to be overrun in our zealous attempts to grow and expand. These irreplaceable landmarks offer a physical link to our past that the historic books can't duplicate.

Again, I appreciate the opportunity to be before the subcommittee on behalf of this important bill, and I look forward to securing your assistance in trying to move this measure through the full Senate.

Senator **Wirth**. Thank you very much, Senator Chiles.

And as I noted to Congressman Bennett earlier, he has been a tireless advocate of this legislation. He and I have discussed it at great length, and I hope that we can move it expeditiously.

I really appreciate your being here.

Senator Bradley?

Senator **Bradley**. Mr. Chairman, let me say that I also have looked at the legislation. I think that it is extremely interesting. I hope the committee will move forward.

Senator **Chiles**. Thank you both very much.

Senator **Wirth**. We will include in the record any further statement you might like to make. Thank you very much, Senator Chiles.

Our next witness is Mr. William Mott, the Director of the National Park Service, Washington, D.C. Perhaps, Mr. Mott, we might ask you, since I believe all three of these pieces of legislation fall within your broad and wonderful purview, that you might want to comment on all three of those for the record. We will include all of your testimony in full at the appropriate places in the record. And you might want to make whatever comments you might include in the record today.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. **Mott**. Thank you very much, Mr. Chairman.

I would like to comment on H.R. 1983, the bill relative to the lands in the St. Johns River Valley. We recommend that the bill not be enacted, and I have to say this in deference to the splendid work that Congressman Bennett does for the National Park Service in helping and developing the Fort Caroline area which he has been consistently a supporter of, both financially and in helping us to do the job.

We feel that this particular project and the land that is involved would be better served through State and local action rather than for the National Park Service to be involved in this particular project.

With regards to H.R. 2121, putting a road through the historic Chickamauga-Chattanooga military park in Georgia, we are in complete accord that this road should not go through the park simply because it is carrying such a volume of traffic, and it probably will increase. We support the concept of the road going around the park.

I personally visited the site. I think the only conflict that we have in connection with it is how is it going to be paid for. The National Park Service gets an appropriation each year for its roads. We have a billion-dollar backlog of road construction. We are recommending that for the construction of this road, since it carries local and commercial traffic, that the funding of the road be the responsibility of the State using its share of money from the Federal Highway Administration.

With regards to S. 858, dealing with abandoned shipwrecks, again we are recommending that this bill be enacted. There are a few suggested changes that we think should be made in connection with this bill in order to make it a better bill, as far as we see the situation. If you would like, I can comment on those recommendations, but they are all included in my testimony.

[The prepared statements of Mr. Mott follow:]

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 29, 1987

Mr. Chairman, I appreciate the opportunity to present the views of the Department of the Interior on S. 858 dealing with abandoned shipwrecks.

We firmly believe that the recovery of historic shipwrecks is an archeological activity, not a maritime activity. The remains of historic shipwrecks, whether whole or fragmentary, should be left intact on the seafloor until they can be scientifically excavated. Once excavated, the remains should be preserved in museums for the benefit of the public, not sold for personal gain. This is why we have consistently recommended enactment of legislation such as S. 858 that would remove the salvage of all abandoned shipwrecks from the purview of admiralty and maritime jurisdiction. Many abandoned shipwrecks are not historically significant and States would have little reason to prevent commercial salvage of them under S. 858. A goal of this legislation is to protect those abandoned shipwrecks that are historically significant.

We recommend the enactment of S. 858, if amended as suggested below.

S. 858 would provide for the protection of abandoned shipwrecks and their cargo and contents. It would (a) assert Federal title to, and release to the several States and territories, any claims of ownership and any right to administer certain abandoned shipwrecks by the Federal Government within the navigable waters of a State; (b) assert and retain Federal title to abandoned shipwrecks in or on the public lands of the United States (except the Outer Continental Shelf); (c) make inapplicable the United States maritime laws of salvage and finds to certain abandoned shipwrecks; and (d) direct the

Advisory Council on Historic Preservation to publish advisory guidelines for the protection of historic shipwrecks.

We believe that S. 858 would provide a mechanism for the protection of the Nation's sunken historic shipwrecks, while allowing the States to permit commercial salvage of abandoned shipwrecks that are not historic. During the 98th and 99th Congresses, we recommended enactment of similar legislation with a number of modifications. We are pleased to see that several of our suggestions have been included in S. 858. In addition, we recommend a number of further modifications to this legislation in order to maintain consistency with other historic preservation statutes and Federal agency responsibilities.

Section 5 of S. 858 would direct the Advisory Council on Historic Preservation to publish advisory guidelines for the protection of historic shipwrecks and properties. The guidelines would assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this legislation, consistent with the policies stated in section 4 on rights of access. Because the Departments of the Interior and Commerce have the most expertise in the preservation of historic shipwrecks, we recommend that section 5 be amended to direct these two Departments to develop and jointly publish guidelines for the identification, evaluation and protection of historic shipwrecks, instead of the Advisory Council on Historic Preservation. This would assure consistency with two previous Congressional mandates.

First, in 1980 the Congress directed the Department of the Interior to issue standards and guidelines for the preservation of historic properties. Second, in 1984 the Congress directed the National Park Service, ". . . in cooperation with the maritime preservation community and the National Trust for Historic Preservation, to conduct a survey of historic maritime resources, including those of the Service; recommend standards and priorities for the preservation of those resources; and recommend the appropriate Federal and private sector roles in addressing those priorities."

In response to the first mandate, in September of 1983 the Department issued the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These advisory standards and guidelines address the full range of historic preservation management issues including: preservation planning; the identification, evaluation, registration, and documentation of significant archeological and historic properties; treatments for preservation projects; and professional qualifications. The standards and guidelines are applicable to all classes of archeological and historic properties, whether terrestrial, buried or submerged.

In response to the second mandate, the National Park Service has initiated a number of activities relevant to S. 858, including (a) undertaking an inventory of shipwrecks; (b) documenting shipwreck sites in the National Park System; (c) advising the National Oceanic and Atmospheric Administration, Department of Commerce, in using existing National Park Service standards and guidelines in the USS Monitor archeological project and in drafting standards for the preservation of submerged cultural resources in National Marine Sanctuaries and protected areas; and (d) developing and issuing a technical bulletin that provides instructions for applying the National Register criteria and for nominating shipwrecks and historic vessels to the National Register of Historic Places.

As a result of these activities within the Department, we believe that it would be more appropriate to expand the existing standards and guidelines to include more specific guidance on the full range of preservation issues relating to historic shipwrecks, rather than to involve another agency with yet another set of guidelines.

Section 6 of S. 858 would provide for the United States to assert title to any abandoned shipwreck that meets one of three criteria presented in subsection (a). It further requires that the public be given adequate notice of the site location. We believe that, under the Archaeological Resources Protection Act of 1979 and the National Historic Preservation Act of 1966 (as amended), the Congress directed Federal agencies to withhold from disclosure to the public information relating to the location or nature of an archeological or historic property if such disclosure would result in a substantial risk of harm, theft or destruction to the property. Therefore, we recommend that the language on notifying the public in section 6(a) either be deleted or amended to state that publication of general locational information on a site such as mineral lease block numbers, rather than specific coordinates, would constitute adequate notice to the public of its location. Alternatively, we recommend that appropriate explanatory language be included in the committee report to accompany S. 858.

In addition, section 6(a)(2) of S. 858 would restrict assertion of title to any abandoned shipwreck that is embedded in coralline formations by requiring that the coralline formation be "protected" by a State. We recommend that the restriction of formal protection be deleted because there is no standard mechanism by which States uniformly recognize and protect such formations. We understand that the Department of Commerce, through its Marine Sanctuaries Program and its Marine Fisheries Program, is the only agency that is able to designate, protect and manage certain coral resources in any consistent, nationwide manner. Therefore, we recommend that the words "protected by a State" be deleted from section 6(a)(2).

We are pleased to see the inclusion of language in section 6(c) asserting and retaining Federal title to any abandoned shipwreck that is located in or on public lands of the United States, except the Outer Continental Shelf. This would enable Federal land managing agencies to continue to manage and protect abandoned shipwrecks that are located on lands that the agencies own and administer or hold fee simple title to. However, it is unclear if agencies such as the National Park Service and the Fish and Wildlife Service would be able to continue to manage and protect abandoned shipwrecks that are located on lands that, while within designated units of the national park system and the wildlife refuge system, are held in fee simple title by State or local Government agencies or other parties. We believe that in those instances when a Federal agency is, by agreement or law, managing historic shipwrecks located on lands under the jurisdiction of, but not owned by, the agency, the United States Government should assert and retain title to such shipwrecks. We recommend that additional language be inserted in section 6(c) specifically exempting from transfer to States any shipwreck that is located on lands which are owned or administered by the United States. Alternatively, we recommend that explanatory language be included in the committee report to accompany S. 858.

In addition, section 6(c) should claim title for Indian tribes or individual Indians to any abandoned shipwreck that is located in or on Indian lands since, under the Archaeological Resources Protection Act of 1979, cultural resources located on Indian lands are owned by the Indian or Indian tribe having jurisdiction over the land. The addition of such language in section 6(c) would be consistent with the definition of the terms "public lands" and "Indian lands" presented in section 3(3) of the bill.

We also recommend that additional language be inserted in section 6 specifically exempting from transfer to States any shipwreck, regardless of its location, that is under the control of or claimed by a Federal agency such as the United States Navy. Alternatively, the term "abandoned shipwreck" could be defined in section 3. This definition would be particularly useful to address questions that could arise should a shipwreck of foreign origin be claimed by another sovereignty.

In addition to the above recommendations, we would like to insure that you are aware of one other point which has not been addressed in the bill. S. 858 would not provide new Federal authority for the supervision or control over historic shipwrecks on the seabed and subsoil outside State boundaries. The Department of Commerce advises that, under the Marine Sanctuaries Act, authority exists for Federal management of certain historic shipwrecks seaward from three miles of the coastline. The Department of State also has advised us that under customary international law, such authority exists, although it is limited. For example, the United States has ownership rights and exclusive jurisdiction over sunken U.S. warships wherever they might be. In addition, article 303 of the 1982 Law of the Sea Convention, which reflects customary international law, grants nations general jurisdiction over shipwrecks within a "contiguous zone" which, in the case of the United States, extends 12 miles from our coasts. Finally, the United States can restrict the activities of U.S. nationals with respect to any shipwreck beyond the territorial waters of the United States by enacting new law imposing such restrictions, but international law would not allow such restrictions to apply to actions of foreign nationals seaward of 12 miles from our coast. We believe that the limited authority in U.S. and international law is sufficient but we want all parties concerned to understand the limits of this authority.

This concludes my prepared statement on S. 858. I would be happy to answer any questions that you or members of the Subcommittee may have.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING H.R. 1983, AUTHORIZING THE SECRETARY OF THE INTERIOR TO PRESERVE CERTAIN WETLANDS AND HISTORIC AND PREHISTORIC SITES IN THE ST. JOHNS RIVER VALLEY, FLORIDA

SEPTEMBER 29, 1987

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on H.R. 1983, which passed the House of Representatives on July 21, 1987.

We recommend that the bill not be enacted. We believe that the conservation and protection of the resources addressed in this bill should be a matter of State or local action.

The bill contains two titles. Title I would amend the 1950 Act that authorized the establishment of Fort Caroline National Memorial in Florida. Title II would establish a new national preserve in the St. Johns River Valley near Jacksonville, Florida, and it would authorize acquisition of several specific historic properties in the area of the preserve.

The two titles are interrelated in that Title II provides that the Secretary shall administer the preserve and any historic properties acquired under this bill through the facilities and staff of Fort Caroline National Memorial.

Title I would amend the 1950 Fort Caroline statute in two substantive ways: it would direct the Secretary to construct museum facilities, and it would repeal the existing authorization to transfer Fort Caroline to the State. We believe these amendments are not necessary. We do not need special authority to construct museum facilities on lands which we administer. We do not propose to recommend that the Secretary transfer Fort Caroline to the State.

Title II would establish a 35,800-acre national preserve in the St. Johns River Valley in Duval County. In the last Congress the Administration opposed establishment of an 80,000-acre preserve, which included about 45,000 acres in the Nassau River Valley in addition to the area in this bill. Although this bill contains a smaller area--confined only to 35,800 acres in Duval County--we continue to oppose the establishment of a preserve. We recommend that the State, which already manages a 52,000-acre aquatic preserve in the St. Johns and Nassau River estuaries, undertake whatever additional conservation action may be appropriate. The National Park Service already manages similar marshland resources in existing areas such as at Everglades National Park.

We have no estimate of the cost of acquiring the private land within the preserve proposed in H.R. 1983. Of the 35,800 acres in the proposed preserve, about 95 percent is below mean high tide, and the State of Florida is claiming title to all lands below mean high tide. There are some high lands that are clearly private, but we have no estimate of their cost. The bill requires that high lands be acquired only with the consent of the owner. Also, we understand that it is the intention of the sponsors of the bill that the 500-acre Theodore Roosevelt Preserve not be acquired, but that a use agreement or lease be negotiated with the Nature Conservancy which owns the tract. It is not the intent of the bill to authorize acquistion of high land south of the St. Johns River.

Title II also authorizes acquisition of several specific historic properties by donation or with donated funds. Except for the Kingsley Plantation, which is owned by the State, and Mission San Juan del Puerto archeological site, the sites and fortifications listed in H.R. 1983 have not been found to be of historic signficance. The Kingsley Plantation and San Juan del Puerto archeologcal site are listed on the National Register of Historic Places, but the other sites are not. Since the State is currently maintaining one of the properties of historic significance, we do not propose to acquire it. We would not propose to acquire the other sites unless they were determined to be nationally significant through a national landmark study.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING H.R. 2121, A BILL TO AUTHORIZE AND DIRECT THE NATIONAL PARK SERVICE TO ASSIST THE STATE OF GEORGIA IN RELOCATING A HIGHWAY AFFECTING THE CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK IN GEORGIA.

SEPTEMBER 29, 1987

Mr. Chairman and Members of the Committee, it is a pleasure to provide you with the views of the Department of the Interior on H.R. 2121, a bill to authorize and direct the National Park Service to assist the State of Georgia in relocating U.S. Highway 27 to a new location west of the boundary of Chickamauga and Chattanooga National Military Park, Georgia.

We recommend against enactment of H.R. 2121, as passed by the House.

As passed by the House section 1(a) of H.R. 2121 would require the Secretary of the Interior to grant funds to the State of Georgia for the purpose of relocating the 3.7-mile section of U.S. Highway 27 to the west of the boundary of the park. Section 1(b) provides that the Secretary's portion shall not exceed 75 percent of the total costs of relocating the road. Section 1(c) authorizes an appropriation of $30 million for the road relocation and further provides that the funds shall remain available until expended.

A 3.7 mile segment of U.S. Highway 27 is administered by the National Park Service within the boundaries of Chickamauga and Chattanooga National Military Park. The highway is a major north-south artery located in northwest Georgia adjacent to Chattanooga, Tennessee. Primarily a four-lane highway, the road narrows to two lanes through the park. A daily average of 14,000 vehicles, including 800 18-wheelers, use the 3.7 mile segment. Ninety percent of this traffic is commuter and commercial in nature, while 10 percent can be attributed to park visitation. The heavy use of this road causes a significant adverse impact on the parks' cultural and natural resources. There are 59 historic monuments and 66 authentic Civil War cannons on U.S. 27.

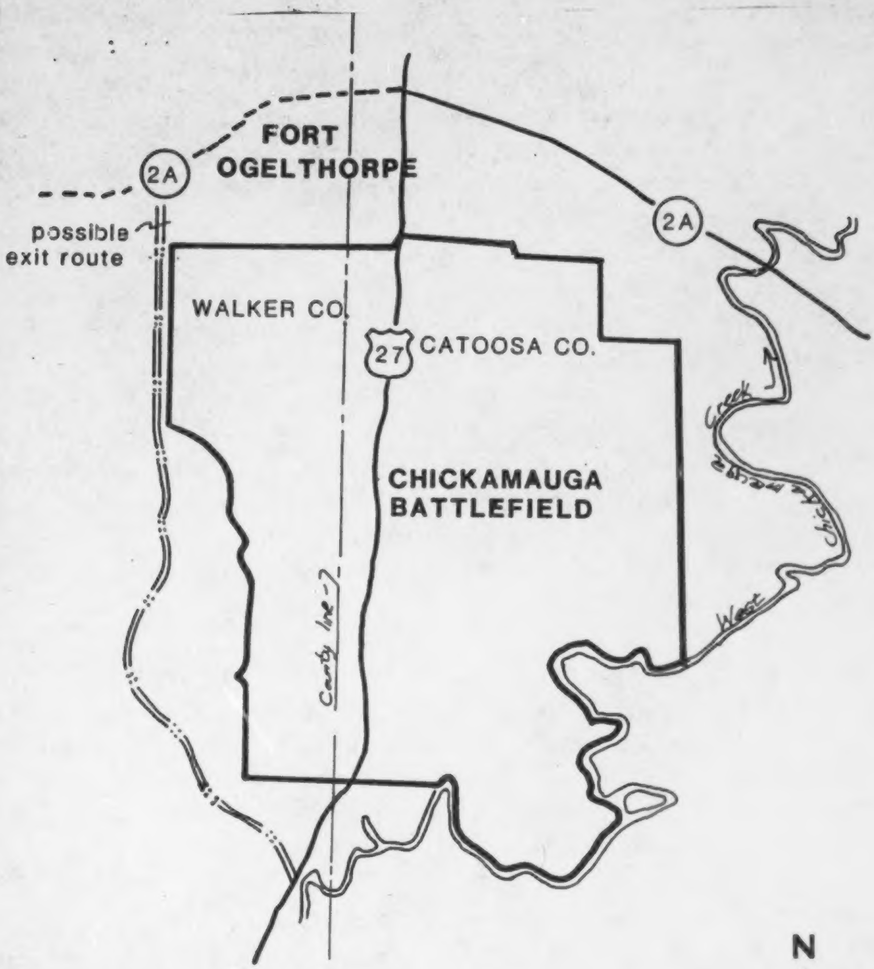
Further, the road intrudes greatly on the visitor experience through noise and air pollution and safety hazards. Critical safety problems have arisen for both the visitor and non-visitor with 58 accidents including 17 deer road kills and $128,000 in property damage in 1986. Therefore, the intent of section 1(a) -- to facilitate relocating U.S. Highway 27 -- is completely consistent with the National Park Service plan for Chickamauga and Chattanooga National Military Park.

I would like to focus your attention on the issue of the funding formula for the relocation in section 1(b). Because we believe this is basically a State and local traffic issue, we believe that it should be addressed and funded by the State of Georgia from the State's allocation from the Highway Trust Fund or with State and local funds.

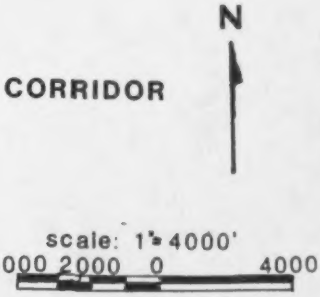
We would point out that the National Park Service already has in line many other park road projects totalling in excess of $1 billion that need to be funded from our regular roads program. We have neither sufficient funds now, nor do we anticipate having sufficient funds in the future, to address the relocation of U.S. Highway 27 from within our allocation.

Mr. Chairman, there is a need to relocate U.S. Highway 27 out of the park. U.S. Highway 27 is primarily a commercial and commuter road; it has no place within the boundaries of the Chickmauga and Chattanooga National Military Park. The National Park Service has cooperated fully with the State of Georgia and local officials, and we intend to continue such cooperation, but we believe that the State of Georgia has the ultimate responsibility of solving this traffic problem.

That concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions that you or other members of the Committee may have.


FORT OGELTHORPE
2A
2A
possible exit route
WALKER CO.
27
CATOOSA CO.
CHICKAMAUGA BATTLEFIELD
County line
West Chickamauga Creek

NPS PREFERRED-RT. 27 RELOCATION CORRIDOR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━━ BOUNDARY LINE
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=::= PROPOSED RELOACTION ROUTE

Senator **Wirth**. We will include all of those in full in the record, Mr. Mott.

Senator Bradley?

Senator **Bradley**. Mr. Chairman, let me thank Mr. Mott for his suggestions on the shipwreck bill. I think they are very positive suggestions, and I think they will help the bill.

I think also we need to give you the chance to talk a little bit about the issue. It's an issue that is fraught with misunderstanding.

I just wondered if you could tell us, Mr. Mott, does the Park Service manage any underwater wrecks on park lands now?

Mr. **Mott**. Yes. As you probably know, we have a diving team stationed at Santa Fe that does a great deal of this work. We have shipwreck areas within the jurisdiction of the National Park Service which our divers have located and for which we have made measured drawings in detail. We are now using some of the new techniques of developing these measured drawings to enable us to do the job a lot faster, but we do manage these.

The problem that we run into is in connection with under whose jurisdiction is the responsibility for these shipwrecks. Sometimes they are in waters that are not Federal waters but are State waters, and they claim jurisdiction of these, and then they are salvaged for artifacts and things of that sort, instead of preserving them for the historic values.

Senator **Bradley**. But the Park Service does have experience in the management of shipwrecks?

Mr. **Mott**. Absolutely, yes.

Senator **Bradley**. One of the areas of some concern, as we will hear from later witnesses, relates to the issue of sport diving. And as I understand it, the parks in a number of places have promoted sport diving—is that correct—in places like Isle Royal, Michigan, and Channel Island, California, and Truk Lagoon in the trust territories.

Could you give some sense of what this promotion has meant for the local communities?

Mr. **Mott**. Well, I think the divers are under permit, and they dive down and investigate the shipwrecks. I think it is a fine recreational activity, and we support that type of thing.

What we are concerned about is, however, if we don't have jurisdiction then they remove the artifacts from the vessels and salvage them and, therefore, the historic value of that particular shipwreck is lost.

This is a popular recreation activity, and we think it fits into the requirements of the National Park Service.

Senator **Bradley**. The number of sport divers is increasing dramatically. I mean there are some 5 million divers certified in the country, a number predicted to double in the next 10 years.

From your standpoint, do you find it quite consistent to manage underwater wrecks and at the same time have sport diving encouraged and available?

Mr. **Mott**. Yes. Where we control the situation, we don't have a problem with that.

Senator **Bradley**. Could you tell me, have you ever thought of applying funds from the historic preservation fund to shipwrecks?

Mr. **Mott**. If we request funds for that purpose?

Senator **Bradley**. Yes, like underwater surveys, charting, wreck documentation.

Mr. **Mott**. Yes, we do.

Senator **Bradley**. You do that.

Mr. **Mott**. Yes.

Senator **Bradley**. And you find it fully consistent with the purpose of the law.

Mr. **Mott**. That's correct, yes.

Senator **Bradley**. Mr. Mott, thank you very much for your testimony. I think it is extremely helpful. I think this is an issue that is important, and I think the National Park Service is certainly a trustee that all sides can respect.

Senator **Wirth**. Mr. Mott, we thank you very much for being with us today, and look forward to working with you. I hope we can clear up any misunderstandings that might exist on H.R. 1983, Congressman Bennett's legislation. And I would hope that we might be able to come to agreement with the administration on that legislation, which many of us would like to see move quite quickly.

Mr. **Mott**. We'd appreciate that.

[Subsequent to the hearing Mr. Mott submitted the following responses to questions from Senator Bumpers:]

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. BOX 37127
WASHINGTON, D.C. 20013-7127

IN REPLY REFER TO:

L58(180)

OCT 31 1987

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

Enclosed are our responses to the questions submitted with your letter of September 30 on S. 858 and H.R. 1983.

We appreciate the opportunity to supplement our testimony.

Sincerely,

William Penn Mott, Jr.
Director

Enclosures

QUESTIONS SUBMITTED BY SENATOR BUMPERS

S. 858

Question: Are any abandoned shipwrecks currently protected by the Park Service inside units of the National Park System?

Answer: At least 58 units of the National Park System contain submerged cultural resources, including shipwrecks and other prehistoric and historic archeological sites. The National Park Service has surveyed and documented approximately 110 shipwrecks which are located in National Park System units. In addition, from historical records we know that well over 1,000 vessels sank in the vicinity of areas which now are units of the National Park System. For example, we know that roughly 500 marine disasters have been reported off the coast of Cape Cod. An equivalent number of marine disasters have been reported off Cape Hatteras.

Under existing statutes and agreements, the National Park Service manages and protects abandoned shipwrecks that are located in the National Park System. However, the Service does not hold fee simple title to all of the lands within the National Park System. Thus, the levels of protection provided by the Service in those units vary according to the agreements or laws which authorized the Service to manage the non-Federal lands.

Question: In your testimony you stated that "recovery of historic shipwrecks is an archeological activity, not a maritime activity." Please elaborate.

Answer: Submerged shipwrecks which meet the criteria of the National Register of Historic Places are historic sites. Those shipwrecks are deserving of the same levels of protection that are afforded other districts, sites, buildings, structures and objects which meet the National Register criteria. The location of such sites, whether submerged or terrestrial, has no effect on the historic value of the sites. The fact that shipwrecks are less accessible than terrestrial sites results in their being more likely to retain their historical integrity and value. The obvious exception to this is those shipwrecks that have been damaged or destroyed by commercial salvage under admiralty law or have been vandalized or damaged by divers.

In 1906, the United States Congress directed Federal agencies to protect archeological and historic sites on public and Indian lands. Enactment of the Archaeological Resources Protection Act of 1979 reinforced and furthered this initial mandate. The Act provides for criminal and civil penalties to protect archeological and historic sites on public and Indian lands from vandalism, destruction and commercial exploitation. The Act provides for a permitting system to allow scientists and researchers to study the sites. The Act also requires that materials recovered or removed from sites are preserved in qualified repositories.

Hundreds of abandoned historic shipwrecks are located on public and Indian lands, and thus are protected under existing historic preservation laws. The thousands of abandoned historic shipwrecks that are located in the territorial waters of the United States should be provided the same levels of protections.

Admiralty (maritime) laws relate to the saving of lives and property that are under peril of being lost at sea. Admiralty laws provide a mechanism for rewarding those persons who risk their own lives and property to save others and salvage vessels and cargo. By definition, historic shipwrecks are not in peril. If anything, recovering historic shipwrecks and their contents places them in peril by virtue of moving them from an anaerobic to an aerobic environment. Other than the normal risks present when at sea and when diving, there is no risk involved to persons who locate and excavate historic shipwrecks. Thus, historic shipwrecks should not be subject to admiralty laws.

A large part of the heritage of the United States is maritime in nature. After the initial peopling of the western hemisphere by migrations from Asia during the Pleistocene, people came to our nation via the seas. The thousands of abandoned historic shipwrecks that lay in the waters of the United States reflect virtually all aspects of our heritage, including periods of exploration, colonization, religious proselytization, the slave trade, the Revolutionary and Civil wars, shipping, transportation, the Gold Rush and the world wars. These historic shipwrecks are time capsules about our past. This heritage belongs to the American people and should remain in public ownership.

Question: S. 858 calls for the Advisory Council on Historic Preservation to publish nonbinding advisory guidelines to assist the States and the United States in developing legislation. Would these guidelines recommend the prohibition of sport diving on abandoned shipwrecks? Would these guidelines recommend the prohibition of commercial exploration?

Answer: Many Federal and State agencies currently encourage nonconsumptive access to archeological and historic sites located on lands under their jurisdiction or control. The advisory guidelines should encourage similar nonconsumptive access to historic abandoned shipwrecks by the sport diving community. (Nonconsumptive access means access for recreation, education and exploration, but not for collection of objects.) The guidelines also should encourage State and Federal agencies to develop underwater interpretive programs for divers as well as nondivers. The National Park Service already has begun planning efforts to extend interpretive programs to the underwater sphere. In addition, given the Service's success in using volunteer sport divers to assist the park units in locating and studying historic abandoned shipwrecks, the guidelines should encourage States to draw upon the interest and expertise of volunteers to assist the respective States in similar activities.

Consistent with existing laws governing historic and archeological sites located on public and Indian lands, the advisory guidelines should recommend that States prohibit the commercial salvage and sale of, and vandalism and damage to, historic abandoned shipwrecks. The guidelines should not prohibit the commercial salvage and sale of, and vandalism and damage to, abandoned shipwrecks that are not historic.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

H.R. 1983

Question: H.R. 1983 requires the Secretary of the Interior to "administer the Preserve in such a manner as to protect the natural ecology of its land and water areas." House Committee report language states that inclusion of Fort George Island in the Preserve is not intended to affect the proposed development project on the island. Given the statutory language in the House-passed bill, do you believe the report language adequately protects the developer from regulation by the Park Service? If so, how would you propose this conflict be resolved?

Answer: We view the language in section 201(c) of H.R. 1983 that directs the Secretary to administer the Preserve as applicable to lands and interests in lands acquired for the Preserve under the authority of section 201(b), and not as applicable to all land within the Preserve boundary, regardless of ownership. The bill does not confer any authority upon the Secretary to regulate private lands within the boundary. Private lands on Fort George Island that are wetlands as defined in the bill would be subject to condemnation at the discretion of the Secretary. We view the House Committee report language as guiding the exercise of that discretion to condemn wetlands.

So long as the developer's land is subject to condemnation under the terms of the statute, the report language does not, as a matter of law, protect the developer from condemnation. The report language is a guide, but the Secretary could legally condemn the developer's wetlands. If the Committee wishes to protect the developer from condemnation, language should be added to the bill to prohibit condemnation of his property.

Senator WIRTH. Thank you very much. Our next witness is Senator Robert Graham from the State of Florida. Senator Graham, thank you very much for being with us today, and as with other statements, we will include your testimony and any additional material you might want to present in full in the record.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you very much, Mr. Chairman.

Recognizing that you have a very full agenda for this afternoon, I would like to submit my statement for the record and summarize it orally and respond to any questions that you might have.

Senator WIRTH. Without objection.

Senator GRAHAM. Mr. Chairman and members of the committee, I am here today on behalf of two bills which are important to our State, important to the protection of historic and environmental values, and a special part of the heritage of our Nation, that part of our heritage which relates to our Hispanic ancestors.

The first bill, the St. Johns River Valley Land Acquisition, will save a piece of Florida's northeast coast, which is the precarious home of rare and endangered plant and animal life. It is also the home of a great sweep of history from the period in the 16th Century, when Florida was under the control of the French, through more modern times. It includes important historic areas from the French, Spanish and English periods of our State through the Civil War, the American Revolution, and the Spanish American War. It is truly a national heritage.

It was also, prior to the time of the Europeans, an important site for the Timucuan Indians, and represents a significant historic preserve for their part of our American heritage.

We are asking that this be considered for an addition to the national system of preserves and that it be protected, as are adjacent areas to this currently, under a combination of State and Federal protection.

The second bill is the legislation which has been introduced by Senator Bradley relative to the protection of shipwrecks. Our State has an especially rich heritage of the sea, and with that heritage has come a large number of shipwrecked vessels which are still available, but too many which have been plundered over the past years. There are more than 300 recorded shipwrecks off the coast of Florida from the years 1521 to 1825. It is estimated that there are many hundreds, perhaps thousands, of unrecorded shipwrecks which date from the time of Christopher Columbus.

These shipwrecks represent an important opportunity for new knowledge of our earliest periods of American and colonial history. They also, as the questions of Senator Bradley indicated, are an opportunity for Americans to enjoy and to better understand our under-the-seas treasures. Hundreds of thousands of people come to coastal States of this Nation and to areas under the control of the United States in order to participate in this expanding area of recreation.

We have the opportunity through the type of regulation which would be provided in this legislation to protect these shipwrecks for future generations of Americans to learn from, to know and to enjoy. I urge the distinguished members of this committee to support the abandoned shipwreck legislation and the Timucuan Preserve legislation as a means to secure storehouses of information about our own past which we can then bequeath to future generations of Americans.

[The prepared statement of Senator Graham follows:]

SENATOR BOB GRAHAM'S TESTIMONY

BEFORE THE SENATE ENERGY COMMMITTEE

TUESDAY, SEPTEMBER 29, 1987 WASHINGTON, D.C.

GOOD AFTERNOON MR. CHAIRMAN -- MEMBERS OF THE COMMITTEE...

I appreciate the opportunity to speak about two bills which are important to the environment of Florida and to the Hispanic heritage of our nation.

The first bill -- the St. John's River Valley Land Acquisition -- will save a piece of Florida's northeast coast which is the precarious home of rare and endangered plant and animal life.

The area in question is near the mouth of the St. John's River and includes Fort George Island. The wetlands, tidal marshes and hammock islands support mangroves, corals, birds, shellfish, and are the breeding grounds for fishes and marine animals.

The endangered Atlantic Salt Marsh Snake, the endangered West Indian Manatee, the Rare Spotted Turtle, and the Rare Florida Marsh Mink all live in the areas we believe must be protected.

The habitat in question would be called the Timucuan Ecological and Historic Preserve. It includes about 500 acres adjacent to Fort Caroline -- a 14th century French outpost which provides one of our earliest glimpses into European exploration and settlement of North America.

In the vicinity of the Preserve are other significant historic structures which the Bill authorizes the Secretary of Interior to acquire by donation or with donated funds:

the Spanish 16th Century Forts of San Gabriel and San Estaban;

the English 18th Century forts at St. John's Bluff and Fort George Island;

the Spanish Mission of San Juan del Puerto whose history spans both the 16th and 17th centuries;

the site of the American Revolutionary War Battle of Thomas Creek;

the Zephaniah Kingsley Plantation with its well-preserved examples of 18th and 19th century architecture;

the Spanish-American War fortification on St. John's Bluff.

Because of its strategic location the land in question is layered over by history. Long before Europeans laid claim to it, the Timucuan Indians harvested its rich sealife and built their civilization.

What we can see -- the old mission and plantation buildings, the rare orchids and flocks of hundreds of wild birds, the evidence of at least 26 historic sites and shards of ancient Indian pottery -- is a complex mix of irreplaceable ecology and the living pages of a history book of early America.

What we cannot see is the sterile void we create if we allow this land and water and all it holds to be developed out of existence. Progress without memory is its own kind of dark age.

The Timucuan Ecological and Historic Preserve is part of our American heritage and it is our responsibility to protect it.

At the same time I would direct the attention of the Committee to an important piece of our Hispanic Heritage and the history of the bold times and adventures of the Spanish navigators and explorers.

The shipwrecks lying just offshore, ships which foundered on reefs on starless nights or ships which went down in the terrible storms and hurricanes that ravaged our coastline -- those ships contain volumes of information in their fragments of wooden hull and metal artifacts and coral-encrusted cannons and dishes and sometimes treasure.

Florida alone has more than 300 recorded shipwrecks from the years between 1521 and 1825. The coast of Florida was the main trade route for colonizers and treasure ships. Hundreds -- perhaps thousands -- of unrecorded shipwrecks from the time of Columbus on are likely.

Knowledge gleaned from careful charting and uncovering of these shipwrecks is especially significant to the millions of Hispanic-Americans whose ancestors explored and colonized this country. Ponce de Leon, De Soto, Villafane -- these and scores of seafaring pioneers spent their lives -- and lost them -- in the service of the Spanish Empire, trying to conquer America.

The bill, called the Abandoned Shipwreck Bill, would both grant title of abandoned shipwrecks to the United States and transfer that title to the State in or on whose submerged lands the shipwreck is located. It also creates guidelines for recovery of wrecks and the preservation of wreck sites for marine environmental balance and recreational access, such as that of sport divers to coral reefs.

Until now the salvage of shipwrecks has been haphazard. Sometimes the historic value of the site has been respected, sometimes not.

We know now that the true treasure to be salvaged from the shipwrecks along our coast is the history still submerged with them. The knowledge we bring up along with scraps of wood and silver coins has no price -- and belongs equally to all of us.

I urge the distinguished members of this Committee to support the Abandoned Shipwreck legislation and the Timucuan Preserve legislation as means to secure storehouses of information about our own past, which we can bequeath to future generations of Americans.

Senator WIRTH. Thank you, Senator Graham.

Senator Bradley?

Senator BRADLEY. Mr. Chairman, just let me thank Senator Graham for his support of the shipwrecks bill, and also for his support of these other measures.

Senator WIRTH. Senator Graham, we hope with you that we can move this legislation rapidly. You heard Mr. Mott saying that the administration did not support the Timucuan legislation, and I hope that we might be able, working with your office, Senator Chiles and Congressman Bennett, to either persuade the administration or put the arm on them in such a way that they might, in fact, come out and support that legislation as they have the shipwreck bill.

Senator GRAHAM. We would be willing to place our hope in the wisdom and the sense of American history and our responsibilities for its protection represented in the membership of this committee. We are confident that that hope will not be disappointed.

Senator WIRTH. And our commitment to ecological protection and scarce and fragile wetlands. I would hope that we would find the administration in support of that and not for their destruction.

Senator GRAHAM. And also of the maintenance of habitat for endangered species who have already paid too high a price for our past derelictions, and we should not be responsible for continuing them.

Senator WIRTH. It is hard to believe that the administration, in the face of the goals of this legislation, could in fact come out in opposition of it.

Senator GRAHAM. It must be a temporary aberration. [Laughter.]

Senator WIRTH. That would be my thought. I was sure that it was. And I know that if Mr. Mott is listening as carefully as he usually does, then I am sure that we will find them in an accommodating position.

Senator Graham, thank you very much.

Senator BRADLEY. Mr. Chairman, I wonder if I could interrupt you for a moment. I know that there are a lot of people that wanted to testify in favor of the shipwrecks legislation today, but who could not be here because of schedule conflicts or whatever. And one of them was the State of New Jersey. They have submitted testimony. I wonder if I could submit the testimony from the State of New Jersey in strong support of the legislation, and also the draft of their proposal as to how the State would propose to protect historic shipwrecks, as well as preserve the general rights of sports divers to dive and to explore.

Senator WIRTH. Without objection, that legislation and those suggestions will be included in full in the record. And the record, as noted earlier, will remain open for those who either could not be here today or who will only be able to testify but briefly, and their full statements will be included in the record as well.

[The prepared statement of Richard A. Kantor from the State of New Jersey follows:]

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

DIVISION OF COASTAL RESOURCES

PLEASE ADDRESS REPLY TO:
CN 401
TRENTON, N.J. 08625

Testimony by Richard A. Kantor Before the U.S. Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests

Senate Office Building
Washington, DC
September 29, 1987

New Jersey Is An Equal Opportunity Employer

GOOD MORNING, MY NAME IS RICHARD A. KANTOR. I HAVE BEEN ASKED BY MR. JOHN WEINGART, DIRECTOR OF THE DIVISION OF COASTAL RESOURCES OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PRESENT TESTIMONY ON BEHALF OF THE DEPARTMENT. I AM PLEASED TO TESTIFY TODAY IN SUPPORT OF S. 858. THIS BILL RECOGNIZES THE RESOURCE VALUES OF ABANDONED SHIPWRECKS, THE NEED FOR CLARIFICATION OF THE STATE'S ROLE IN MANAGING THIS RESOURCE, AND PROVIDES FOR DEVELOPMENT OF A COOPERATIVE MANAGEMENT SYSTEM, WHICH IS ESSENTIAL.

NEW JERSEY HAS AN ESTIMATED 3,000 SHIPWRECKS. OUR DEPARTMENT OF ENVIRONMENTAL PROTECTION SEEKS TO PROTECT THEM FOR THEIR ARCHEOLOGICAL, RECREATIONAL, AND FISHERY HABITAT VALUE. AS EXPRESSED IN S. 858, THESE WRECKS ARE IMPORTANT FOR THEIR RECREATIONAL AND EDUCATIONAL OPPORTUNITIES TO SPORT DIVERS, ARE IMPORTANT FOR FINFISHING AND SHELLFISHING AND AS REPOSITORIES OF HISTORICAL INFORMATION. NEW JERSEY'S FEDERALLY APPROVED COASTAL MANAGEMENT PROGRAM INCORPORATES SPECIFIC POLICIES TO CONSERVE THIS RESOURCE AND PROTECT IT FROM USES THAT WOULD IMPAIR THEIR PHYSICAL INTEGRITY.

THE ABILITY OF NEW JERSEY AND OTHER STATES TO EFFECTIVELY PROTECT THIS RESOURCE, HOWEVER, IS HAMPERED BY

CONFUSION CONCERNING RIGHTS OF OWNERSHIP AND THE FORCE AND EFFECT OF ADMIRALTY AND MARITIME JURISDICTION. IN PARTICULAR, NEW JERSEY HAS ATTEMPTED TO NEGOTIATE IN GOOD FAITH ON A NUMBER OF WOULD BE SALVAGE OPERATIONS ONLY TO HAVE THE MATTERS TERMINATE UNSUCCESSFULLY DUE TO OWNERSHIP UNCERTAINTIES. ONE CASE ENDED UP IN FEDERAL DISTRICT COURT. THIS STATE OF AFFAIRS IS NOT CONDUCIVE TO PROMOTING COOPERATION AMONG FINDERS/SALVORS, STATE AND FEDERAL AGENCIES, AMATEUR AND PROFESSIONAL ARCHEOLOGISTS, SPORT DIVERS, FISHERMEN AND OTHER MEMBERS OF THE PUBLIC AND, MORE IMPORTANTLY, IS NOT EFFECTIVE IN PROTECTING THE RESOURCE OR ESTABLISHING UNDERWATER PARKS. THIS BILL WOULD RESOLVE THIS PROBLEM BY CLEARLY ARTICULATING THE STATE'S ROLE IN MANAGEMENT OF THE RESOURCE.

IN RECENT YEARS, THE NEW JERSEY LEGISLATURE HAD BEFORE IT A STATE ANTIQUITIES BILL WHICH WOULD HAVE ESTABLISHED A STATE PROGRAM TO MANAGE SHIPWRECKS. THESE BILLS DIED IN LARGE PART BECAUSE OF UNCERTAINTY CONCERNING APPROPRIATE STATE/FEDERAL ROLES ON THIS ISSUE.

I AM, THEREFORE, DELIGHTED THAT THIS SUBCOMMITTEE IS TODAY CONSIDERING S.858. AS EVIDENCE OF NEW JERSEY'S COMMITMENT TO PROTECTION OF SHIPWRECKS, I AM SUBMITTING AS PART OF MY WRITTEN STATEMENT, A COPY OF NEW DRAFT STATE LEGISLATION DEVELOPED BY NJDEP IN COOPERATION WITH THE SPORT DIVING COMMUNITY, FISHERY SCIENTISTS, AND HISTORIC

PRESERVATIONISTS. THE LEGISLATION REFLECTS PARTICIPATION OF A VARIETY OF INTEREST GROUPS IN THE STATE AND HAS EVOLVED OVER A PERIOD OF YEARS IN RESPONSE TO THE MUDDLED STATE/FEDERAL REGULATORY AND JUDICIAL ENVIRONMENT CONCERNING PROTECTION OF SHIPWRECKS AND THE NEED FOR COMPREHENSIVE MANAGEMENT THAT REFLECTS THE PUBLIC INTEREST, SPORT AND RECREATIONAL INTEREST AND HABITAT VALUE. IT CAN PERHAPS BE USED AS THE FOUNDATION FOR DEVELOPMENT OF ADVISORY GUIDELINES FOR PROTECTION OF SHIPWRECKS AS DESCRIBED IN SECTION 5 OF THE BILL.

IN SUMMARY, S.858 IS AN APPROPRIATE CONGRESSIONAL RESPONSE TO A CONFUSING REGULATORY/LEGAL ENVIRONMENT CONCERNING THE PROTECTION OF AN IRREPLACEABLE RESOURCE. IN THE ABSENCE OF SUCH A MEASURE, THE STATE'S ABILITY TO EFFECTIVELY MANAGE THE RESOURCE WILL CONTINUE TO BE IMPAIRED. WE SEE THIS BILL AS AN ESSENTIAL STEP IN MANAGING THIS RESOURCE WITHIN STATE WATERS, AS A FOUNDATION FOR DEVELOPMENT OF A COOPERATIVE PROGRAM, AND LATER MEASURES TO PROTECT SHIPWRECKS LOCATED IN FEDERAL WATERS.

THANK YOU.

SHIPWRECK MANAGEMENT ACT

DRAFT June, 1987

AN ACT for the identification and management of abandoned sunken vessels located in or below State-owned or controlled water; protecting their historic and ecological resource value; regulating mechanical excavation and salvage; encouraging citizens to report the finding of shipwrecks and artifacts to the appropriate State agency; establishment of an Shipwreck Management Board; and providing penalties and civil liabilities for violations.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "Shipwreck Management Act".

2. The legislature finds and declares that:

(a) Shipwrecks are an important public resource. The sunken remains of vessels lying on the sea floor serve as critical habitat and as congregation areas for many species of migratory finfishes, as well as for crabs and lobsters, and support extensive sport diving activities, recreational and commercial fishing. These activities help support New Jersey's local economies. Therefore, the habitat value of shipwrecks must be preserved in order for these activities to continue to flourish.

(b) There are believed to be over 3,000 shipwrecks in New Jersey's tidal and offshore marine waters. The older vessels are irreplaceable and unique resources of historic and cultural information. Over the years, the sport diving community has recovered many artifacts from abandoned vessels. These artifacts and information associated with them, and their context, have provided much information about New Jersey's maritime history.

(c) Reporting the discovery of historic and ecologically significant shipwrecks and their associated artifacts is encouraged. Recovery of historic shipwreck artifacts, and the excavation of historic shipwrecks is permissable provided that they are properly recorded and preserved from deterioration, that they are available to the general public, and that their recovery results in no net loss of habitat value to living marine species.

(d) It is in the public's interest that governmental agencies work in a cooperative manner with fishermen, sport divers, commercial salvors, marine biologists, maritime historians and underwater archeologists to locate and identify shipwrecks, protect their habitat value and learn about the nation's and state's maritime heritage from the recovery, preservation, study and interpretation of recovered artifacts and the vessels themselves.

(e) Too often objects and artifacts of historic or archeological value have been lost or damaged either through neglect or active destruction with a subsequent loss to future generations of knowledge of a part of their heritage, or the ecology of shipwrecks has been damaged by pollution.

(f) To prevent further loss or damage, and to promote further study and learning, this act establishes and funds a regulatory system under which qualified persons are encouraged to locate, report, preserve, evaluate, study, when appropriate excavate, salvage, and exhibit abandoned shipwrecks and their associated artifacts found in or below State-owned or controlled waters. To prevent further loss of artifacts recovered from historic shipwrecks in federally controlled waters or by divers not using excavation tools, a system shall be established and funded where divers are encouraged to recover and preserve recovered artifacts from all abandoned shipwrecks.

(g) This act encourages an informal partnership of state agencies, sport divers, archaeologists and other interested parties to protect our valuable shipwreck resources and promote underwater archaeology.

3. As used in this act:

(a) "Abandoned" means a vessel or shipwreck to which no person or any organization activity holds or claims any ownership title, at the time of signing of this Act.

(b) "Historic Shipwrecks" means and includes all abandoned sunken vessels and their cargos, tackle, equipment and associated artifacts which may be found in or below State-owned or controlled waters and which have value as objects of history, antiquity, or as archaeological sites; or abandoned sunken vessels which are included in or eligible for inclusion in the National Register of Historic Places, the New Jersey State Register of Historic Places, or the New Jersey Historic Sites Inventory.

(c) "Non-historic Shipwrecks" means and includes abandoned sunken vessels lying in or below State-owned or controlled waters but not meeting above definition under 3a.

(d) "Ecologically Significant Shipwrecks" means and includes abandoned sunken vessel lying in or below State-owned or controlled waters which serve as habitat for some part of a year to a variety of finfishes or shellfishes or as concentration sites for a species of migratory fin or shellfish during part of the year. Historic shipwrecks and non-historic shipwrecks may also be Ecologically Significant Shipwrecks as well.

(e) "State-owned or controlled waters" means and includes all lands under tidally flowed waters under the jurisdiction of the State of New Jersey. This includes all currently and formerly submerged lands downstream from measurable tidal influence to the offshore 3 mile limit of the territorial sea whether or not those lands have been previously conveyed under N.J.S.A. 12:3-4.

(f) "Tools" means and includes: mechanical, hydraulic, gaseous or pneumatic dredges; explosives, prop wash, airlifts, coffer dams, water flow or chemicals, or other tools which may be used to remove or displace sediments. "Non-mechanical" means no use of tools mentioned above.

(g) "Excavation" means and includes the active removal, disturbance displacement and/or dispersal of sediments through the use of tools. Excavation requires a State Waterfront Development Permit under the

Waterfront and Harbor Facilities Law (N.J.S.A. 12:5-3) prior to start of activity.

(h) "Salvage" means and includes the raising to the water surface of abandoned vessel whole or in part, the dismemberment below the water surface and raising to surface of abandoned vessels whole or in part; or to otherwise to raise or remove an abandoned vessel. Salvage does not include the non-mechanical (no use of tools as defined in 3e.) raising of small objects from non-historic shipwrecks, nor does it include the raising of small objects by archaeologists for the purpose of identification or dating a vessel (See Section 5). Salvage requires a State Waterfront Department Permit under the Waterfront and Harbor Facilities Law (N.J.S.A. 12:5-3) prior to start of activity.

(i) "Disturbance" means and includes any act that significantly alters, changes or affects the physical or ecological condition or historic value of an abandoned shipwreck.

(j) "Board" means as described under Section 6.

(k) "Director" means Director of the Division of Coastal Resources.

4. All abandoned shipwrecks located in or below State-owned or controlled waters are declared to be the property of the State of New Jersey. The salvage, raising, excavation, and removal of historic and non-historic shipwrecks or their associated artifacts obtained from, in or below State-owned or controlled waters, is reserved exclusively to the State, and to those agencies designated to that task, or to individuals or organizations which have secured permission from the State.

5. Exceptions:

(a) Nothing in this act shall restrict or require a permit or permission for: underwater exploration, electronic or sonar surveys or searches, photography, marine life collection by persons engaged in the sport of skin or scuba diving, recreational or commercial fishing on any abandoned vessel.

(b) A Waterfront Development Permit is not required for archaeologists or their assistants to conduct mapping of underwater sites, or to probe for shipwreck structure when such probing does not result in any removal of sediment. No permit is required for an archaeologist or assistant to non-mechanically raise small artifacts for the purpose of identification or dating of the vessel, if the object is properly preserved and recorded.

(c) An archaeologist may apply for a letter of authorization waiving the requirement of a permit for limited test pits (no more than 100 cubic feet of sediment removed) to facilitate underwater archaeologist projects. The archaeologist is responsible for returning the site of the pit to as near a natural condition as possible. The Division may decline the request for good cause.

(d) No permit is necessary for the non-mechanical raising of small objects by sport divers on non-historic or ecologically significant shipwrecks, or for objects or artifacts not associated with an abandoned vessel.

6. Formation of a Shipwreck Management Board:

(a) A Shipwreck Management Board shall be formed and will be responsible for the management, protection, excavation, and salvage of historic shipwrecks, non-historic shipwrecks and ecologically significant shipwrecks in or below State-owned or controlled waters, and for making recommendations concerning the issuance of permits to public and private individuals and organizations to engage in recovery, salvage, and excavation activities, and for promoting underwater archaeological projects. The Board shall consist of the State Archeologist, New Jersey State Museum; the State Historic Preservation Officer; the Director of the Division of Coastal Resources; and the Marine Fisheries Administrator in the Department of Environmental Protection; and five public members representing appropriate interests such as: sport divers, historians, profession archeologists, salvors, fishermen, or other interests, to be appointed by the Governor. The public members of the Board shall be appointed for terms of three years. Their initial appointment will be staggered such that two serve for a term of one year, two serve for terms of two years, and two serve for terms of three years. Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses.

(b) The Commissioner of Environmental Protection shall designate a Chairperson of the Board. The Board will meet at least once a quarter each year and at such other times and places as the Chairperson may designate. The Chairperson shall notify all members of the Board at least seven days in advance of any meeting except in cases of emergency. A meeting of the Board will be considered valid for the purposes of conducting business if six or more Board members are present. The majority of those present at such meetings will be empowered to pass binding votes on behalf of the Board.

(c) The Board shall be in the Department of Environmental Protection. No action of the Board shall become effective unless the Commissioner of the Department of Environmental Protection approves minutes of the Board meeting, or unless the Commissioner fails to either approve or disapprove the minutes or a part thereof within 25 calendar days of the meeting.

7. The Shipwreck Management Board shall:

(a) Coordinate with all departments, agencies, officials and institutions of the State and its political subdivisions that are concerned with the matters under its supervision;

(b) Cooperative and consult with appropriate Federal agencies and agencies of other states;

(c) Develop within 18 months, after at least one public hearing a list of known historic, non-historic and ecologically significant shipwrecks in or below State-owned or controlled waters; and in or below waters beyond the 3 mile territorial sea under federal jurisdiction; and keep and annually update a register. The Board may withhold from the general public information on the whereabouts of the location of certain historic shipwrecks if, in the opinion of the Board, the disclosure of such whereabouts would promote damage to the resource, or would interfere with a State approved excavation in progress.

(d) Encourage divers, boat captains, diving and fishing organizations, and private individuals to report discoveries and recoveries from historic and non-historic shipwrecks to the Board and to promote their cooperation with the State in the protection and preservation of such historic shipwrecks recoveries; encourage people to report the location of ecologically significant shipwrecks in order to protect their ecology from disturbance.

(e) Have the power to direct appropriate law enforcement agencies and their officers to enforce this law and the rules and regulations promulgated by the Shipwreck Management Board; and to issue administrative orders to cease and desist unauthorized excavation or salvage;

(f) Encourage the exposition of recovered historic and non-historic shipwrecks and artifacts by responsible public or private organizations and individuals;

(g) Review applications for Waterfront Development Permits (N.J.S.A. 12:5-3) that may impact historic, non-historic or ecologically significant shipwrecks and make recommendations to the Director; such as requiring permit applicants to perform a thorough search using requisite instruments to detect historic and non-historic shipwrecks if documentation indicate possible presence in an area to be disturbed; or to replace hard substrates removed during an excavation or salvage;

(h) The Board shall within 18 months, after at least one public hearing, recommend to the Commissioner of Environmental Protection any rules and regulations it believes necessary regarding permit requirements for the excavation or salvage of historic, non-historic and ecologically significant shipwrecks to insure the protection of their archeological, ecological, recreational, historical, and educational value. These rules and regulations shall be adopted into the New Jersey Administrative Code;

(i) Enter into agreements and review proposed activities related to the federal agencies' management and enforcement of abandoned sunken vessels beyond the territorial waters of this State and make recommendations to the Director on proposed federal action;

(j) Apply for, receive and expend such Federal, state, regional, local government or private funds as may be available therefore to carry out its duties;

(k) Request assistance from appropriate State and local agencies and private organizations and individuals;

(l) Oversee the excavation and salvage operations by permit holders.

(m) Review the professional qualifications and relevant background information on any individual or organizations requesting a permit.

8(a) No person, organization or corporation may remove, displace, excavate, salvage, disturb, damage or destroy historic or ecologically significant shipwrecks or their contents except in conformity with the provisions of this act. Any qualified and responsible person, organization, corporation desiring to conduct any type of salvage, excavation or disturbance operation of a historic, ecologically significant, or non-historic shipwreck shall first make application to the Director for a permit to conduct such operations. Any applicant for a permit must submit an brief Environmental Impact Statement in such form as required by the rules and regulations established by the Board pursuant to this Act.

(b) If the Director, through consultation of the Board, shall find that the operations desired comply with rules adopted by the Board and other applicable State laws and regulations he shall within ninety calendar days (90) from the receipt of a complete application make a decision to grant or deny the applicant a permit which allows the applicant the exclusive and sole right to disturbed, excavate, or salvage an abandoned shipwreck or part thereof, for a period of 3 years. The permit shall include without limitation the location, nature and extent of activity, reporting requirements and time period covered rights to division of recovered artifacts as required by No. 9 below, subcontracting of permit rights shall provide for the termination of the rights of the permittee on violation of any of the terms of the permit. Until such times as a permit for any given site is granted, all records regarding the permit application for the site shall be confidential unless released by the applicant with the permission of the Director.

(c) The Board by rule may establish appropriate fees with respect to nature and extent of activity for such permits. Such permits shall be renewable for one year by the Director; provided, however, there has been good-faith efforts regularly to complete the activity during the period of the original permit. A maximum of one renewal shall be granted.

(d) The permittee may, with the approval of the Board, subcontract his permit rights to another qualified and responsible person, organization or corporation, subject to the terms of the original permit. The subcontractor shall be named on the permit as co-permittee.

(e) All salvage and excavation operations undertaken pursuant to permit shall be carried out under the general supervisions of the Board in accordance with its rules and regulations so that the maximum amount of historical, scientific, archeological and educational information may be recovered, reported and preserved. The Director may require that a permittee be required to work under the direction of a qualified expert designated by the Board. Permittees shall be responsible for obtaining permission of any Federal agencies having jurisdiction prior to conducting any operation.

9. The Board shall adopt rules on how recovered artifacts may be divided between the State and permit holders. Such division of ownership shall be based on the public's historic, archaeological, or educational interest and the need to fairly compensate the permittee for salvage or excavation efforts. A time schedule for this division shall be part of the permit. If historic or archaeological value require preservation in situ,

then the Board shall advise the Director to not permit excavation or salvage. Any resulting profit to the State shall be used for support underwater archaeological projects or artificial reef building.

10. Upon the request of any interested party, the Director may require a public hearing, on the granting or renewal of a permit, subcontracting of permit rights, or the division of historic shipwreck artifacts recovered under the permit. The Director may, at their own discretion, require a public hearing on the granting or renewal of a permit, subcontracting if permit rights, or the division of historic shipwrecks artifacts recovered under a permit.

11. Law enforcement agencies and officers of this State and its subdivisions shall enforce the laws, rules and regulations pertaining to abandoned shipwrecks. It is the responsibility of the permittee to protect the shipwreck from the salvage, removal or excavation of said resource by unauthorized parties. The permittee shall assume all liability for such protection and shall assume all liability for personal injury or property damage.

12. Any person violating a provision of this act or permit issued hereunder shall be quality of a misdemeanor punishable by a fine of not more than ______________________, imprisonment of ________, or both, and shall forfeit any historic shipwrecks or any of their contents that he has obtained thereby. In addition, the permit shall be subject to revocation or suspension. Violations committed within the coastal waters of this State may be prosecuted in any district which has venue over the coastal waters. The Superior Court sitting in equity shall have jurisdiction to restrain continuing violations of this section of the Act and shall have jurisdiction to compel the restoration to the State of any historic shipwrecks or artifacts taken in violations of the provisions of this section of the Act. Any tools, vessels, or equipment used to violate this Act shall be confiscated by the State.

6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is expressed in its title.

Senator **Wirth**. Senator Fowler is here. Senator Fowler, do you have any comments that you might like to make, particularly on the legislation about which——

Senator **Fowler**. No, Mr. Chairman.

Senator **Wirth** [continuing]. Congressman Darden had spoken so eloquently earlier?

If not, let us move to our first panel of witnesses, the first on S. 858, Mr. David Horan from Key West, Florida. Perhaps all of these individuals would please come forward to the witness table now, and we will ask you to testify together, as I believe the staff had pointed out we would do. Mr. David P. Horan from Key West, Florida; Mr. William Gleason from Skin Diver Magazine in Los Angeles. Is Mr. Gleason here? If you would come and join us at the table. Could we do that please? Mr. Thomas Maddox from the East Coast Diving Supply in Northfield, New Jersey. Is Mr. Maddox here? And Mr. Jack Fullmer from the New Jersey Council of Diving Clubs in Neptune, New Jersey. Mr. Fullmer.

To all of you, thank you very much for being here, and I think you got a clear sense of the rules and hopes of the committee. We will include your statements in full in the record, and would hope that you could summarize your testimony in three minutes or less. In order to make that possible and remind you of that timing, we have a green, orange and red light system. When your testimony begins, the green light will go on. With a minute left, the orange light will go on, and guess what. Where there is no time, the red light will go on.

We are delighted to have you here. Mr. Horan, maybe we could start with you, then go right to Mr. Gleason, Mr. Maddox and Mr. Fullmer. Thank you very much for being here.

STATEMENT OF DAVID PAUL HORAN, ATTORNEY, KEY WEST, FL

Mr. **Horan**. Mr. Chairman, Senator Bradley, Senator Fowler, ladies and gentlemen, my name is David Paul Horan. I'm an attorney from Key West, Florida, and for the past 12 years I have represented private enterprise which has found and recovered a number of ancient vessels and their cargoes.

Senator Bradley, in your "Dear Colleague" letter of March 17, you pointed out "Under the current system, Federal courts sitting in admiralty have substantial policy making power, which has resulted in uneven judgments about the historical value of shipwrecks." Now, on that point, you are certainly correct.

What is being inadvertently overlooked in this legislation is that some of the present Federal admiralty case law is exactly what Congress is always looking for. It is a win-win situation. Everybody wins. The archaeologists, the historian, private initiative, private risk capital, and public and private museums.

What is the status of the law that the proposed regulation would actually supplant? In the short time allocated to me I can do nothing more than possibly arouse your curiosity, maybe even enough to get you to personally read my formal presentation I am submitting for the record. It documents with direct quotes what I say is true today. If the States own the wrecks, no matter who finds them, then there is no possibility for a donation to the State. It would take away the present incentive of private enterprise to go out, find, disclose the location of a wreck site.

Past Federal admiralty law has proved that in this country the Federal courts using their constitutional grant of admiralty and maritime claims are uniquely suited to making sure that all interests in old shipwrecks are protected. Certainly protecting the demonstrated ability of individual initiative and private risk capital to search for and find such wrecks is a worthwhile objective. Protecting the interest that we all share in archaeological and historical information—well, that's a must. And making sure that a cross-sectional representation of the wrecks is available for display to the public is a common concern that we all share.

The question to be addressed in the legislation is who or what can best insure the protection of these common interests. It's a compelling misconception by some of the proponents that State agencies are more qualified to develop, display and disseminate the data originating from maritime finds than are the private salvors, that giving the State title and preemptory authority to determine who, when and if a wreck site may be salvage is the way to protect it.

Is the happenstance of geographical location enough to justify a proliferation of State agency rules and regulations regarding such recoveries? Shouldn't one law govern whether the winds of fate dashed a particular ship's hopes on a New England rock or the coral reef in the Bermuda Triangle or a sandy coast off the Gulf Coast? Certainly the rules governing a citizen's rights to search for and be rewarded should not depend upon the historical accident whereby a ship's remains and cargo have come to rest.

These points were specifically addressed in a recent Federal court opinion which fashioned relief appropriate for safeguarding the interest which each State might obtain through its laws. The common interests we all share are being protected. Federal courts have required—no, demanded—that salvage of historical vessels include protection of archaeological and historical data.

The Federal court decisions have allowed the States to come into the court and request that unique items be awarded to the State museums, and the mere prospect of the State coming into the court insures that there is a donation from the private salvors to the State.

I have got about 34 seconds. With the danger of losing major items off the tops, the States, rather than having the benefit of the donation, the private salvors have the strongest of incentives to come in and donate those major items to the State. The citizens of the State haven't spent one single penny to search for, find or document or bring those items in.

Now, under the Federal court jurisdiction, an agreed system of archaeological controls and donations has been working in Florida for the past four years. It does work. It's a win-win situation. And we continue to live a little freer, and we will be able to rejoice when we hear of another American like Mel Fisher who went out and made his or her dream come true. Let's work in that direction. Don't destroy the incentive.

[The prepared statement of Mr. Horan follows:]

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HISTORIC SHIPWRECK RECOVERY, PAST, PRESENT AND FUTURE: AN ARGUMENT IN FAVOR OF FEDERAL ADMIRALTY LAW

In the last nine (9) years, there have been a number of Bills introduced which would declare that all "historic shipwrecks" which lie within the boundaries of the respective states (i.e. beneath the State's navigable waters or its territorial sea, extending three [3] miles from the shoreline) are subject to State, not federal law with the Federal Maritime Law of Salvage suddenly becoming inapplicable to such shipwrecks.

Should the Federal Legislation pass, it would divest the Federal District Courts of their historic and constitutional jurisdiction over admiralty and maritime claims. The Federal District Courts were given exclusive jurisdiction over admiralty and maritime claims under Article 3, Section 2 of the United States Constitution, and therefore the proposed legislation is of doubtful constitutionality. There is no doubt however, that it would have far-reaching effects on both sport diving and salvage. Each State would be free to claim title to and possession of each and every shipwreck that happened to sink in their waters. State bureaucracies and legislative schemes claiming such ownership have, in most cases, been invalidated by the Federal Admiralty Courts and State Courts because of the irreconcilable conflict with the established maritime law. As Judge James Lawrence King of the United States District Court, Southern District of Florida, pointed out in his October 2nd, 1981 Memorandum Opinion reported at 525 Fed. Supp. 186 at 209,

> Similarly, the happenstance of geographical location is not sufficient to justify a proliferation of rules governing the salvage of historic artifacts lying beneath the navigable seas of this country. One law should govern a salvor's rights, whether the winds of fate have dashed a particular ship's hopes on the New England rocks, on the coral reef, in the Burmuda Triangle, or in the sandy bottom near Florida's Sebastian Inlet. And certainly, the rules governing a salvor's rights

> to search and be rewarded should not depend upon the historical accident whereby a ship's remains and cargo-often, over two centuries before-have come to rest either inside or outside what later became a particular state's three mile territorial boundary. Given the admiralty court's equitable power to fashion relief appropriate for safeguarding the individual interests which a state might seek to obtain through its laws . . . the uniform maritime rights accorded salvors should not be denied.

Salvage law, as contained within the English Common Law and ultimately brought to this country, establishes a long tradition of federal maritime law that has grown out of the cases arising under the constitutionally mandated admiralty and maritime jurisdiction. In his Opinions of October 2nd, 1981 and August 31st, 1982, Judge King points out that there are at least three (3) principles which conflict irreconcilably with the State's attempts to govern the salvage of historically significant vessels that have been abandoned under navigable waters within the territorial limits of the United States.

As Judge King pointed out in his October 2nd, 1981 Memorandum; at 525 Fed. Supp. 186, at 203,

> The requirement that one be [State] licensed to be able to explore the ocean for abandoned property at the bottom, contravenes the maritime law principle that potential salvors be free to explore the open waters.

The second major principle of admiralty and salvage which the State's control would contravene is that unmeritorous salvors may be granted exclusive rights to salve in contravention of the established maritime law. There is a great body of established law that sets forth the proposition that one who discovers, yet does not assiduously undertake to rescue, abandoned property may lose his rights to uninterrupted salvage operations. Judge King, in 525 Fed. Supp. 186, at 206 states:

> Florida's statutory and regulatory salvage scheme is inconsistant with these principles. Under the State's leasing program, once a salvor is preliminarily approved by the Division, the exclusive right to salvage he acquires is safeguarded regardless of his subsequent success, or lack thereof, during the period of the lease. Such a result is contrary to admiralty's "diligence" ethic which underlies a policy of encouraging the careful, effective, and expeditious retrival of goods which have been abandoned at sea. Finally, Florida's system of administratively determining a salvor's compensation conflicts with admiralty's flexible method of renumeration which is based on risk and merit. The simple fact is salvage is a very expensive proposition at best. From a common sense standpoint it's clear that unless there is some way of retrieving the risk capital etc. all incentive to return goods to the streams of commerce from which they were lost would be gone. (Emphasis Supplied)

With no impartial arbiter, State bureaucrats have in the past, and will in the future, destroy any financial incentive for private risk capital. Simply put, attempting to "give" the states "title" to salvagable ships that are not even found will kill the private interests in such salvage. While every Member of Congress gives lip service to deregulation and private initiative, the presently proposed legiglation will, if passed, destroy a presently functioning system.

After three (3) years of litigation which cost the taxpayers of the State of Florida nearly One Million Dollars in attorney's fees and costs, the Court held:

> The consistant policy underlying admiralty's salvage awards is that salvors will be liberally rewarded. Admiralty holds out a contuing incentive to undertake the physical and financial risks entaled in salvage operations and to bring the property thus recovered into Court for a salvage determination. Marine treasure salvors - whether they are in the Gulf of Mexico, the North Atlantic, or the Gulfstream, whether within or beyond State territorial waters - are well aware of this policy and are guided by its consistancy. 525 F.Supp. 186, at 207.

With regard to any proposed federal legislation, a historical background is necessary in order to get a firm understanding of where we stand today. With a firm understanding of the past, and the present status of the law, it is possible to make a rational decision as to the need for any federal legislation on the subject and if so, how extensive that federal legislation should be.

Over two hundred (200) years ago, our forefathers gave complete and exclusive jurisdiction over admiralty and maritime claims to the Federal District Courts [Article III, Section 2, U.S. Constitution]. In 1910 the United States signed the Convention on Certain Rules Regarding Assistance in Salvage at Sea which can be found at 37 Stat. 1658. Two (2) years later, the United States passed the Salvage Act of 1912 which legislatively implemented the provisions of the International Treaty. The Salvage Act of 1912 is codified as 46 U.S.C. 721 et seq.

The modern impedus towards federal legislation which would divest the Federal District Courts of their Constitutional admiralty jurisdiction started in early 1970 with the discovery of a Spanish Galleon on the Outer Continental Shelf of the United States where it had rested, undiscovered, on the bottom for over three hundred fifty (350) years. Soon after its discovery, the State of Florida had threatened arrest of the salvors and confiscation of their vessels and their equipment if the salvors did not sign a contract recognizing the State of Florida as the "owner" of the vessel and the salvage. The coerced contract took twenty-five (25%) percent "off the top" without any provision for the return of the private risk capital. When the first *in rem* salvage action was filed before the Federal District Court in 1975, the State of Florida and agents of the U.S. Department of the Interior were secretly engaged in negotiations which had as their goal the establishment of a federal/state claim to the galleon and all salvage that had been discovered and recovered by the private salvor.

Because of an agreement between the United States and the State of Florida, the first Intervening Claimant was the Department of Interior which claimed one hundred (100%) percent of the recovery. The pre-litigation agreement negotiated between the United States and Florida went so far as to contemplate the State of Florida keeping twenty-five (25%) percent of the recovery after the litigation concluded in favor of the United States. When the United States came into the litigation and in order to show jurisdiction over the "objects of antiquity" on the Outer Continental Shelf, the Department of Interior amended the Off-Shore Oil Exploration Leases of the United States to require magnetometer surveys to discovery "cultural resources" prior to seismic sampling or drilling. The cost of these surveys were allowed, by the Department of Energy, to be passed through to the American public.

A Summary Judgment was entered against the United States by the District Court and the United States appealed. In 1978, after losing the appeal, the United States dropped out of the litigation and the State of Florida belatedly made its claim to twenty-five (25%) percent of the salvage which it was holding in Tallahassee, Florida. After losing before the District Court, the State took an appeal, lost it and then, after the January 1982 Oral Arguments before the United States Supreme Court, the State lost in a plurality decision issued July 2nd, 1982. Twelve (12) other State, American Samoa, Guam and Puerto Rico had filed Amicus Briefs.

There is no way of telling how much the Department of the Interior or the States spent in their failing efforts to take the salvage away from the private salvors who had risked life and private risk capital in their quest for the salvage of the historic vessel. The data presently available shows that in order to try to show that the Department of Interior was protecting such wrecks, the federal offshore oil leases were amended to require surveys to discover ancient wrecks. Over Twenty Million ($20,000,000.00) Dollars were spent by thirty-seven (37) different oil companies doing unneeded magnetomer surveys that never found anything! It should be noted that this tremendous expenditure of funds which were passed on to the American public, was not required by any enabling legislation, but by an entrenched bureaucracy!

THE PRESENT

As of today, the Federal District Courts sitting in admiralty have firmly established that the process of natural history which erroded the vessels structure has not diminished the federal rights and remedies available to a salvor who successfully returns to the mainstream of commerce, goods otherwise left buried and lost beneath the sea. As the proponents of the federal legislation keep reminding us, the ancient historic shipwrecks are sources of archeological/historical information that provide windows in time through which we can view the daily lives of our ancestors. Undeniably, there are strong public interests in regard to such information. What we cannot loose sight of is the fact that salvors perform a very beneficial function in returning to the streams of commerce, those identifiable cargos of former vessels. The proposed federal legislation would detrimentally effect the maritime right of a salvor to uninterrupted salvage operations where such salvor, in conducting his operations, demonstrates that degree of dominion and control which is appropriate under the circumstances.

The proponents of the proposed federal legislation are working under a compelling misconception. This misconception and the basic premise of the proponents argument is that a bureaucratic agency is more dedicated and more qualified to develop, display and disseminate the data originating from maritime salvage then are the private salvors. The proof reveals quite a different picture. Neither the states nor the federal government have the expertice or funding to do the archival research, location, discovery or salvage of ancient shipwrecks. Private salvors using private risk capital not tax revenues have done it all, including the extensive archival research, the years of search, the discovery of the wreck and the bringing in of outstanding experts from all over the world to verify the finds. The private salvors, using private risk capital, have identified the wrecks and kept meticulous records and sponsored numerous publications to broad demographic markets, television specials ect. and the list goes on and on . . .

What all this boils down to is that the proponents of the federal legislation suggest that federal ownership or state ownership will insure the preservation of archeological material while Federal Admiralty Jurisdiction will destroy it. The proponents of the federal legislation insist that there is nothing to protect historic shipwrecks from the ravages of irresponsible private salvors. This "major premise" is not only false, but many proponents of the proposed legislation fail to recognize that it is directly in opposition to the present admiralty law of the Federal District Courts. There is not one instance where the Federal Courts have been a party or involved with the destruction of the archeological or historical significance of an ancient vessel!!

THE FUTURE

The proposed legislation is not needed beacuse the legal structure for protection of these wrecks already exists! A salvor, by filing an in rem action before the Federal Admiralty Court is given not only protection of his federal rights to salvage, but a determination as to title to the salvage. The proposed federal legislation would erradicate years of jurisprudence and the Federal District Court's expertice and impartial arbitration in salvage matters. These hundreds of years of jurisprudence would be replaced with whatever bureaucratic regulations each state might enact. This procedure would go against the very rational for exclusive federal admiralty jurisdiction: to promote a uniform legal structure for ships and seamen which travel among the various states and to and from foreign ports. Any attempt to replace our time proven uniform maritime law should be carefully considered for the chaotic results could prove extemely deliterious to our nations maritime commerce and to the archeological/historical resource represented by such wrecks.

Because of the fiduciary obligation of a salvor to the federal admiralty court, there exists the strongest of incentives for a salvor to use the utmost care in bringing a vessel or its cargo before the Court so that the value of the property saved will be higher, thus entitling the salvor to a more liberal salvage award. The proposed legislation will produce the opposite result: where a state claims ownership of a wrecksite, the salvor has no incentive to bring forth his find for an adjudication of his rights. The mere existance of the proposed law would encourage the finder of such a vessel to pilfer such a wrecksite without informing anyone of his discovery. It is exactly this procedure which has been used to destroy such historic wrecksites, not the the ongoing jurisdiction of the Federal District Courts.

The proposed federal legislation would certainly destroy many more historic shipwrecks than it would protect and their archeological and cultural significance would be lost forever.

It is the Maritime Law of Salvage which now protects the important cultural resources represented by a historic shipwreck. While adjudicating the rights of salvors to the 1715 Spanish Plate Fleet, Judge James Lawrence King held that;

> This Court now holds that in order to state a claim for a salvage award on an ancient vessel of historical and archeological significance, it is an essential element that the salvors document to the admiralty court's satisfaction that it has preserved the archeological provenience of a shipwreck. . . accordingly,

> however, this court holds that by meeting the threshhold requirement, a salvor simultaneously "enhances" the value of his discovery in such a way as will be explicitly recognized by the Court in the determination of the salvage award. Cobb Coin v. The Unidentified Wrecked And Abandoned Sailing Vessel, 549 Fed. Supp. at 559 [S.D. Fla. 1982] (Emphasis Added)

The Federal Admiralty Courts are now insuring that the public interest is being protected by entitling the State or a federal representative to intervene in each salvage award so that a representative cross-section of the artifacts recovered from the wrecksites can be donated by the private salvor and/or awarded by the Federal District Court. In this way, the Maritime Law of Salvage insures that the people's cultural heritage will be preserved in public museums. Inasmuch as the State is guaranteed to receive such an archeological cross-section, any fears that the cultural and historical heritage will be permanently dissipated are completely unfounded. Under the maritime law of salvage, as it stands today, the historic shipwrecks which lie beneath the territorial waters of the United States are protected in such a way that there is both an incentive to discover them and to undertake the risks and dangers inherent in their salvage and a requirement that, if salvaged, the operation be carried out in such a manner as their archeological, cultural and historical significance will be protected.

One has to question why Congress now proposes yet another costly law at a time when the federal budget cannot afford it and when a better and proven legal structure is already in existance. The answer has to be that well-meaning Congressmen that do not have the full story are wishing to demonstrate to their constituents that they are "protecting the nation's historical resources." While their intentions may be well-meaning, the exploration and salvage for such vessels is an area which is far better administered by the Federal District Courts. In the past ten (10) years, Federal and State Court decisions have documented over-zealous state bureaucrats who have time and time again instituted and participated in the bad-faith harrassment and arrests of divers who had accidentally or through diligent search discovered historic shipwrecks.

In speaking about "valuable resources" it is important to recognize that private salvors, using private risk capital, are valuable resources for the public that the proposed federal legislation would lose forever. To suggest that leaving these cultural resources subject to the perils of the sea would better serve the public is idiocy.

AN ALTERNATIVE TO THE PROPOSED LEGISLATION

Even though most of the federal admiralty law is case law, the protection of archological/historical data from ancient shipwrecks could be subject to federal legislation by amendment to the Salvage Act of 1912. The legal jurisdiction to make this proposal work is already in place. A new Section of Title 46 could be added which would provide that:

1. After discovery of a wrecked and abandoned vessel, the finder must bring an *in rem* salvage action in the nearest United States District Court prior to substantial salvage activities being undertaken.

2. The salvor must publish public notice of his action under the supplemental rules regarding certain admiralty claims.

3. The salvor must conduct the salvage of an ancient wrecked and abandoned vessel in such a manner as will preserve and protect the archeological/historical significance of the shipwreck. Recovered items will be tagged as to their horizontal and vertical location when recovered and preservation shall be carried out which will at least stabilize the recovered items.

4. Any state or appropriate federal agency may intervene in the District Court litigation to represent the "public interest" in preserving the archeological and historical data contained within the wrecksite.

5. The "public interest" intervenor may seek court permision to place, at no cost to the salvor, an agent on board the salvage vessels. The agent will document and authenticate the recovery of items from the wrecksite.

6. If, during the salvage activities, the "public interest" representative determines that adequate protection of archeological and historical data is not being provided by the salvor, an application to the federal court must be made to alter or stop the salvage. The "public interest" representative must then carry the burden of proof in the request and must, prior to filing such a request, post a bond for costs and fees and an affidavit showing cause for the request and alleging specifically what action is needed to adequately protect the wrecksite.

> In the event the "public interest" representative fails to carry the burden of proof and the court denies the application to alter or stop the salvage, the salvor shall recover all costs [including reasonable attorney's fees] incurred in defending against the application.
>
> 7. In the event that a "public interest" representative determines, after a full investigation, that the shipwreck is of such importance to the public interest that it is necessary to stop salvage and replace it with a scientific excavation of a very comprehensive nature, application for such permission shall be made to the court. If, after a full evidentiary hearing the Court finds that such importance exists in the wrecksite, the salvor shall be paid all of his expenses to date, including all costs [including reasonable attorney's fees]. The salvor will then work with the "public interest" archeological team in completing the scientific excavation and recovery and thereafter the salvor shall retain title to all of the recovered items as the original finder and salvor. The "public interest" representatives shall document the archeological and historical significance of the wrecksite and shall be in a position to intervene in the salvage award determination to assert an interest on behalf of its citizenry to particular artifacts recovered which are not represented in its present inventory and which it feels are essential to the preservation of the people's heritage.

The practical aspect of this proposed Amendment to Title 46 of the United States Code, is that the present situation under the established federal admiralty decisions would continue and the state or federal intervenor would be in a position to work with the private salvor to maximize the tax consequences of a donation rather than waiting to intervene in future salvage award determinations.

This alternative to the proposed federal legislation has already been drafted and proposed in the House. Please don't let partizan politics ruin this workable system. We can continue and "fine tune" the present federal laws and preserve the archeological and historic interests that all of us share -- with your help!

THANK YOU,

DAVID PAUL HORAN & ASSOCIATES, P.A.
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DAVID PAUL HORAN
For the Firm

Senator **Wirth**. Thank you very much, Mr. Horan.

You are here for Mr. Gleason. Is that right?

Mr. **Dorwin**. Yes.

Senator **Wirth**. You are.

Mr. **Dorwin**. Yes.

Senator **Wirth**. OK.

Mr. **Dorwin**. My name is John Dorwin, and I have been asked to summarize Mr. Gleason's testimony. Mr. Gleason is the publisher and editor of Skin Diver Magazine.

Senator **Bradley**. Mr. Chairman? Could you identify yourself?

Mr. **Dorwin**. My name is John Dorwin.

Senator **Wirth**. That's what I thought I had asked if you were here for Mr. Gleason.

Mr. **Dorwin**. Yes, I am.

Senator **Wirth**. You are.

Mr. **Dorwin**. Yes.

Senator **Wirth**. Let's start again. Why don't you then take it from the top, and identify yourself for the purposes of the record.

STATEMENT OF BILL GLEASON, PUBLISHER AND EDITOR, SKIN DIVER MAGAZINE, AS PRESENTED BY JOHN DORWIN

Mr. **Dorwin**. Certainly. My name is John Dorwin.

I am an archaeologist by training, and I am here to summarize Mr. Gleason's position. Mr. Gleason is the publisher and editor of Skin Diver Magazine, the largest diving magazine in the world.

And in summarizing his position, of the active diving population, Skin Diver estimates that more than 400,000 divers went wreck diving at least once last year. Wreck diving refers to the recreational exploration of sunken shipwrecks and is served by a network of 2,000 retail diver shops, 4,000 charter boats and 11,000 instructors in the U.S.

Skin Diver Magazine is strongly opposed to the passage of S. 858. The primary reason is the bill fails to safeguard divers' access to shipwrecks in any specific way. S. 858 grants individual States broad, sweeping powers over shipwrecks out to the three mile limit. These broad powers would allow States to limit access arbitrarily and without recourse, and could adversely affect recreational divers and the businesses that serve them.

S. 858 is a study of special interest group conflict. Marine archaeologists wish to overturn admiralty law which is fiercely protected by treasure salvors. The American Wreck Diver, 400,000 strong, stands to lose a great deal if admiralty law is overturned. In the present situation, archaeologists, salvors and recreational divers all enjoy the same access to our shipwrecks. S. 858 would severely upset this balance and put control of all shipwrecks in the hands of marine archaeologists.

Proponents of the bill will answer that the claims of divers are adequately covered by an obscure reference in the bill for States to provide access by divers to shipwreck sites. Mr. Gleason challenges anyone on the committee to answer the who, what, where, when and why questions concerning access to the sites once this bill is passed. The clause is a naive attempt to dupe recreational divers into supporting this bill.

In addition then I would like to comment that in years past, throughout the effort to get the present bill passed, the legitimate salvor has been unfairly cast as the villain. He is the one who operates under admiralty jurisdiction of the Federal courts. He is much more regulated now and has to accomplish his work under archaeological direction. The archaeological community in general has responded to this effort by such tactics as attempting to blackball any archaeologist who contracts with or works for a salvor, planning to prevent the presentation of legitimate archaeological papers at conferences if they are prepared by archaeologists who have worked for a salvor and a de facto conspiracy of silence by editors of archaeological journals, having the effect of not publishing such papers. The charge is then made that the archaeologist working for the salvors are not publishing results.

I believe the bill is likely to have the simple effect of eliminating legitimate recovery for all but a favored few archaeologists plus the rip-and-tear artifact hunter. Despite comments presented elsewhere, the latter does not include salvors working under admiralty jurisdiction. It is likely to place most shipwrecks off limits to sport divers or require that they obtain permits to visit wrecks only under the supervision of State personnel with all the attendant problems of scheduling and funding.

It seems to me that those speaking for the bill are not concerned with the kind and quality of the archaeological work being accomplished on historic shipwrecks, but rather who is doing the work. This bill is an attempt to close the door to anyone who can do archaeology on historic shipwrecks and limit that work to a selected in-group. It is a power play being made under the "apple pie and motherhood" guise of historic preservation. Please give it the attention it deserves, and leave well enough alone.

[The prepared statement of Mr. Gleason follows:]

SKIN DIVER Magazine
Position Statement: S-838
by Bill Gleason, Publisher and Editor, SKIN DIVER Magazine
September 29, 1987

Distinguished Subcommittee Members:

SKIN DIVER Magazine is currently in it's 37th year of publication. It is the largest diving magazine in the world, and is dedicated to serving the needs of the estimated 1.2 million active divers in the United States. SKIN DIVER's paid circulation is 219,000 issues per month, with a total diving readership of over 1 million readers. Of the active diving population, SKIN DIVER estimates that more than 400,000 divers went "wreck diving" at least once last year. "Wreck diving" refers to the recreational exploration of sunken shipwrecks and is served by a network of 2,000 retail dive ships, 4,000 charter boats, and 11,000 instructors in the United States.

continued...

SKIN DIVER Magazine is strongly opposed to the passage of S-838. The primary reason is the bill fails to safeguard diver's access to shipwrecks in any specific way. S-838 grants individual states broad, sweeping powers over shipwrecks out to the three mile limit. These broad powers would allow states to limit access arbitrarily and without recourse, and could adversely affect recreational divers and the businesses that serve them.

S-838 is a study of special interest group conflict. Marine archeologists (less that 100 people employed full time in the U.S.) wish to overturn Admiralty Law, which is fiercely protected by treasure salvors (again, less than 100 full time employed people in the U.S.). The American Wreck Diver, 400,000 strong, stands to lose a great deal if Admiralty Law is overturned. In the present situation, archeologists, salvors, and recreational divers all enjoy the same access to our shipwrecks. S-838 would severely upset this balance and put control of all shipwrecks in the hands of marine archeologists.

continued...

SKIN DIVER, throughout it's history, has always been pro-conservation. Our policy has always been to be in the forefront of conservation efforts. Yet divers find 80-90% of most shipwrecks; a fact which marine archeologists, underfunded as they are, are quite jealous of. The archeologists, while conceding the point that the vast majority of shipwrecks do not have major archeological significance, nevertheless wish to protect a chosen few by having title to all.

This is clearly not in the best interests of a democracy. If marine archeologists can pinpoint wrecks of significant historic interest, (even if not located yet) they should petition the Congress to protect those specific wrecks. But no, S-838 wants title to all! That is blatantly unfair to recreational divers!

Proponents of the bill will answer that the claims of divers are adequately covered by an obscure reference in the bill for states to provide access by divers to shipwreck sites. I challenge anyone on the committee to answer the WHO, WHAT, WHERE, WHEN, AND WHY questions concerning our access to the sites once this bill is passed. This clause is a naive attempt to dupe recreational divers into supporting this bill.

continued...

Gentlemen, it is indeed ironic that, as we sit here in this subcommittee, citizens of the United States are risking their lives in the Persian Gulf to protect freedom of the seas.

While these brave meh go about this task, S-838 is attempting to restrict freedom beneath the sea in a calculated move against the American Wreck diving community. If you are in favor of this bill limiting diver's freedom beneath the sea, perhaps you should be aware that you, as the government of the U.S., are espousing freedom 9,000 miles away from home while severely restricting the rights and freedom of your citizens at home!

The recreational diving community, some 1.2 million voters strong, awaits your response...

Senator WIRTH. Thank you very much, Mr. Dorwin.

Our next witness is Mr. Thomas Maddox from the East Coast Diving Supply in Northfield, New Jersey. Mr. Maddox, thank you as well.

STATEMENT OF THOMAS A. MADDOX, EAST COAST DIVING SUPPLY

Mr. MADDOX. Thank you, Mr. Chairman, distinguished members of the committee, ladies and gentlemen. I would like to thank you for the opportunity to speak before you today on Bill S. 858 concerning shipwreck legislation.

My name is Thomas Maddox, and I own a charter dive boat, a dive store and a school in New Jersey, and I would like to make a record that my business probably ranks in the top 100 of dive operations concerning volume of people trained and divers taking diving each year. Ninety-five percent of our diving does take place on shipwrecks.

Before I begin with my testimony, which I will submit written testimony for the record, I would like to take a second and just say that New Jersey plays an extremely important role in this legislation due to the fact that Senator Bradley does cosponsor the bill and also Congressman Hughes from New Jersey as well. And the record stands for themselves. I believe that they are well-intentioned.

But I would like to call a few points to everyone's attention. And just briefly, skimming through the notes, since we don't have a lot of time to go through my complete testimony, I'll just recap some of the high points.

There are, as we have heard, 400,000 to 500,000 active wreck divers in the United States. Due to my interest in this bill for a number of years, I have had the opportunity to speak to thousands of these divers through dive clubs, dive stores, meetings, and while out on dive boats, and I have found basically two facts. One is that in many cases the divers are not aware of the pending legislation, and the other is that they do know about it and are very afraid of it and don't want it.

I think it proves one thing, that this legislation is being forced upon us rather quickly with the largest number of those involved who could be adversely affected not even having a say in what happens.

I know that we have sent—and I have seen numerous letters and cards that have been sent to the sponsor's office. Yet we are told by their offices that this legislation is in the sport diver's best interest. I find that hard to believe since so many people that I know are against it, and I haven't seen one who actually is.

The bill affects three distinct groups: treasure salvors; underwater archaeologists, of which there are less than 100 each; and as I mentioned, maybe a half a million wreck divers.

Sport divers and dive store owners see many problems with the bill. The wording suggests that it will protect us when in fact, once ownership is transferred, the State can do anything that it wants. Congressman Bennett testified just a little while ago that they can only suggest limitations to the State, that the State can actually do whatever it wants.

The State could close dive sites to the recreational divers for numerous reasons at its discretion. And this is certainly one of our main concerns.

The other one is that we have heard many States adopting or trying to adopt a permit policy. Frankly, we are against that. We have had access to these resources for a number of years, all these years, and now we are faced with having to go through a permit policy that could possibly be dealt out unfairly.

I have heard underwater archaeologists suggest that sport divers should not be allowed on shipwrecks at all. Yet, the majority of significant underwater finds have been discovered by the private sector. The fact is the State nor professional underwater archaeologists have the time, money or resources to bring our maritime heritage to light.

The bill as written could have a devastating effect on our retail industry. Diving retailers like myself rely on these wrecks as a resource, and we feel that it could put our free enterprise system in jeopardy.

Mr. Chairman, I'll submit the rest of my——

Senator WIRTH. The statement will, as you know, Mr. Maddox, be included in full in the record. And we appreciate your being here.

[The prepared statement of Mr. Maddox follows:]

TESTIMOMY OF
THOMAS A. MADDOX

BEFORE THE UNITED STATES SENATE
ENERGY AND NATURAL RESOURCE COMMITTEE
SUB-COMMITTE ON LAND USE

TUESDAY SEPTEMBER 29, 1987

Mr. Chairman, distinguished members of this committee, ladies and gentleman:

I thank you for this opportunity to speak before you today on Bill S-858 concerning Shipwreck Legislation. My name is Thomas Maddox and I own a charter dive boat, a dive store and school in New Jersey. My business probably ranks in the top 100 dive operations in the United States in regards to the volume of divers that we train and the number of people that we take diving each year. Approximately 95% of all of our diving takes place on shipwrecks, as New Jersey is considered the "wreck diving capitql" of the world.

Before I begin with my testimony, I would like to make a few comments. I would like to say that New Jersey plays a major role in this legislation, not only due to the great amount of wreck diving that takes place there, but also because this Bill is sponsored by Senator Bradley from New Jersey and it's companion Bill in the House is co-sponsored by Congressman William Hughes, also of New Jersey. I would like to go on record that I think that there are no finer representatives of our state than these two men. Their reputations and their records speak for themselves.

I have personally supported them and their efforts in regards to ocean dumping, funding of our Marine Mammal Stranding Center and many more worthwhile projects designed with our coastline in mind. I feel that their work is to be commended and that those of us living in New Jersey are fortunate to have legislators of this caliber.

I fully believe that their motives for sponsoring a Bill such as S-858 are well intentioned, although I believe that they have failed to consider some important points that I would like to remind you of today.

There are estimates of as many as 400,000 to 500,000 active wreck divers in the United States. I have been very active in following Shipwreck legislation in congress and have had the opportunity to speak to thousands of these divers through dive clubs, dive stores and while on boats. I have found two basic reactions. One is that the diver was unaware of pending legislation, but when told about it, was against it and the second reaction was that they knew about it, were against it and afraid of what would happen.

In either case, it proves that this legislation is being forced upon us without the largest number of people that will be affected even having a say in what happens.

I have seen numerous letters and cards that have been sent to the sponsors of this bill including Senator Bradley's office, voicing opposition to it's content, yet when speaking to their offices we are told that this legislation is in the sport divers' best interest.

I personally find this hard to believe, since I have found that sport divers are almost unanomously opposed to the Bill.

This Bill affects three distinct groups; the treasure salvors, the underwater archaeologists and the sport divers. The salvor and the archaeologist number less than 100 in each profession, but the wreck diver numbers into the hundreds of thousands. Don't pass a bill that jeopardizes their constitutional rights.

Sport divers and Dive Store owners see many problems with this Bill. The wording suggests that the states will protect us, but the fact is that the state, once ownership is transferred, can do anything that it wants. We are not guaranteed access to these wrecks. If the state has our interests in mind, then why is it that divers are not allowed to dive in most State Parks and lands?

The State could close dive sites to the recreational diver for numerous reasons, at it's discretion. At the very least, we could see the state adopting a permit policy, that could possibly be dealt out unfairly. I have to question the Constitutionality of restricting my access to something that I have had the right to all of these years.

I have heard Underwater Archaeologists suggest that Sport Divers should not be allowed on shipwrecks at all, yet the majority of significant underwater finds have been discovered by the private sector.

The fact is, that the state nor professional underwater archaeologists have the time, money or resources to bring our maritime heritage to light. This can only be done by the private sector, yet this Bill, by it's content, moves to isolate and retard the greatest and most knowledgeable work force that could be put to use to this aim.

This Bill, as written, could also have a devastating effect on our retail industry. Diving retailers like myself rely on these wrecks as a resource. If we could not dive on them we would experience a great decline in our ability to make money. We would not teach as many people, for they would have nowhere to dive. Contrary to what Archaeologists would have you believe, wreck divers are not down there stealing our national history. In most cases they are finding it for the American People. Don't adopt a law which would limit the free enterprise system.

The solution to these problems should be worked out over a period of time. There is no urgent need to force this law into effect without further investigation. The controversial nature of this Bill is reason enough to make sure that it develops into something that will work for everyone.

I feel that we should leave Admiralty Law in its rightfull place, giving a cohesive manner of dealing with historically significant shipwrecks to our country, instead of letting the states develop 50 different methods themselves.

Give the states power to oversee the preservation of historical artifacts through sound archaeological practices. Perhaps allocate Federal grants, with matching funds, to encourage the private divers to work with the state and professional archaeologist in shipwreck research. If the intent of this legislation is to preserve our maritime history, then why not use all of the resources at our disposal to that end? Encourage the private diver to come to the state for asssistance instead of turning them into an adversary that you cannot control!

Through my business alone, I have sponsored underwater archaeology programs in our historic Mullica River. This has been done at essentially no cost to the state. We have provided the state of New Jersey with valuable information concerning the Revolutionary Warships that are there. We have educated many divers about sound underwater archaeology techniques through these programs. Some of our students are still diving these sites and providing the state with more valuable information, at their own expense. I would like to point out that the state would probably not have the time or money to fund such a program, and that our research shows that some of the shipwrecks would soon be lost to tidal erosion. Let's keep the spirit of this co-operation between the state and private sector alive.

I have also sponsored Wreck Diving symposiums in Atlantic City, New Jersey for the last two years. These symposiums are the effort of numerous private groups and individuals that donate their time. We have had displays from major treasure finds such as Mel Fischer's Atocha, which he brought to our symposium at great personal expense. Other artifacts from numerous wrecks were also on display. Thousands of people were able to see these historical artifacts first hand. In addition to seeing them, they were educated concerning there origin and history. I doubt whether any state would put as much effort or money behind such a program. Certainly the American public would be the loser if this were the case.

In all, I have donated countless hours and almost $10,000 in funds and services in the last two years alone, with no return on my investment other than the satisfaction of helping to preserve our national hertitage. If I can no longer take part in this effort, will the state and it's archaeologists take my place?

I would suggest that you look to Congressman Norman Shumway's shipwreck Bill introduced into the House on April 9th, of this year as a starting point of a more acceptable approach to Shipwreck management. While H.R.2071 is not a cure all, it does have merits that the American Sport diver can live with.

Respectfully Submitted,

Thomas A. Maddox

Senator WIRTH. Mr. Fullmer?

STATEMENT OF JACK FULLMER, LEGISLATIVE COMMITTEE CHAIRMAN, NEW JERSEY COUNCIL OF DIVING CLUBS

Mr. FULLMER. I'm Jack Fullmer, Legislative Committee Chairman, New Jersey Council of Diving Clubs, an organization of 18 sport diving clubs throughout New Jersey.

The New Jersey Council of Diving Clubs believes in the intelligent management of our shipwreck resources. We look at shipwrecks as primarily reefs in an otherwise barren sea bottom. They are important for fishing, diving. At least 70 percent of all diving in New Jersey is done on our shipwreck reefs.

What confuses us a little bit about S. 858 is why the Advisory Council of Historic Preservation was selected to write guidelines for shipwrecks. Historic shipwrecks are estimated to represent only about 5 to 6 percent of the total resource. When I asked how many members of this advisory council dived or have ever seen shipwrecks, I was told none. So, here we have a situation where specific administrative regulations are to be written by an organization no member of which has seen a shipwreck and an agency only concerned with 5 percent of the total resource.

What we would like to suggest is a fisheries council sort of idea with the people that are familiar and utilize the resources that are represented. Since 99 percent of all people that dive on shipwrecks and are familiar with the resource are sport divers, you might seriously consider making sure they are well represented.

You should focus on positive concepts. You should stress partnership and cooperation with the sport diving community. This is especially important regarding historic shipwrecks, which I will now direct my attention.

Why? Because sport divers find most of the historic shipwrecks in this country. They do most of the historic research on shipwrecks. They do much of shipwreck mapping. They have nominated many vessels to the State and National Register of Historic Sites, and they assist in most all underwater archaeology projects in this country.

I think it is important to explode some myths about shipwrecks. Myth: salvors are the main cause for the destruction of historic shipwrecks. Fact: dredging projects in rivers, harbors and bays have destroyed most of the historic shipwrecks in this country in the last 100 years.

I think there should be specific wording in this bill that requires a scientific search using requisite scientific instruments to detect possible submerged or buried vessels if historic documents indicate their possible presence. I know this would have helped us a lot in the Crosswicks Creek and near Bordentown in a situation that I don't have time to go into now.

Okay. I want to mention that natural causes cause a lot of destruction of historic shipwrecks. In the Mullica River in South Jersey is a Revolutionary War wreck that has been encroached upon by a 30 foot deep channel that has meandered into it. Within the last 10 years, this wreck has tilted over and large timbers are falling off of it and being swept away. Sport divers are fighting a losing battle to map this wreck before it is completely destroyed.

We would like to suggest—we have nominated this wreck for the State and National Register of Historic Sites in the hopes that we would secure some sort of funding for this threatened site. So far we have been unsuccessful. We would like to suggest specific funding for underwater archaeology to deal with threatened sites, funding that is not in competition with land sites. We could also encourage States with significant underwater archaeologist resources to specifically designate 10 percent of their historic preservation money for underwater archaeology.

I can finish in about a minute here.

In conclusion, the New Jersey Council of Diving Clubs believes this bill is ignoring some major issues in shipwreck management. It is not treating wrecks as a total resource. It is not identifying the true threat to historic shipwrecks. It is not including those groups that are most important in the management of the resource. It is ignoring serious funding issues, and it is not fostering a partnership concept that is most important for the intelligent management of the resource.

The New Jersey Council of Diving Clubs believes that shipwrecks are a public resource and should be open to the public. We believe that shipwrecks are not the exclusive monopoly of archaeologists, salvors or anyone else, but that an intelligent management program based on openness and cooperative effort is what will best serve the development and preservation of the resource. The bill should encourage this idea and encourage innovative designs by States to reach this goal.

Thank you very much for your time.

[The prepared statement of Mr. Fullmer follows:]

(1) 9/29/87

NEW JERSEY COUNCIL
OF DIVING CLUBS
414 GREEN GROVE ROAD
NEPTUNE, NEW JERSEY
07753

Subcommittee on Public Lands National Parks and Forests
Committee on Energy and Natural Resources
U.S. Senate
Washington D C

Dear Chairman:

The New Jersey Council of diving clubs is a non-profit organization of 18 sport diving clubs dedicated to understanding, exploring, and enjoying our underwater environment. The N.J.C.D.C. believes in the intelligent management of our shipwreck resources, a multi-purpose resource. Most shipwrecks are primarily important as reefs in an otherwise barren sea floor, and act as a focal point for marine life. These shipwreck reefs are important to fishermen and sport divers, and for the last 30 years or more, at least 70% of all sport diving in N.J. is done on these shipwreck reefs.

What confuses us about S 858 is why the Advisory Council of Historic Preservation was selected to write guidelines? Historic shipwrecks, although important, constitute only about 5% of the total resource. A shipwreck management bill, which is the title of this bill, should direct itself at the total resource. Wouldn't it make more sense to design an advisory committee that reflects the uses of the resource, sort of like the fisheries council idea, which contain participants that have actually seen shipwrecks before and are familiar with them? Since 99% of all people that actually dive and see shipwrecks are sport divers, it might make good sense to make sure they are well represented on any committee that is suggesting specific administrative regulations regarding shipwrecks.

We believe that Congress should focus on positive concepts in this bill, concepts that stress cooperation and partnership in the management of the resource. For example, this Bill could encourage states to bring sport divers, fishermen, and other interested individuals into their management programs at the state level, an idea that is important for preserving historic shipwrecks.

Sport divers play a key role in shipwreck preservation for they find most of the historic shipwrecks in this country. They have nominated many shipwrecks for the Sate and National Register of Historic Sites, and do much of the underwater site mapping. They assist in almost all underwater archaeology projects, and write many articles and books on local shipwrecks.

But shipwrecks are not static resources, and they are threatened, not so much from salvors, as from large scale dredging and construction projects and from natural causes. For example, dredging projects are responsible for most of the destruction of historic shipwrecks over the past hundred years

NEW JERSEY COUNCIL
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07753

and it continues to take a toll because of lack of interest and limited funding to scientifically check to see if wrecks are sunk or buried in the path of large scale projects. A similar situation occured recently near Bordentown when Revolutionary War vessels were located near a proposed highway project and historic documents suggested more might be buried directly in the impact area. Wording should be added to this Bill to absolutely require a scientific search if historic research indicates possible presence.

Within the last ten years another Revolutionary War vessel in the Mullica River has tipped over at a precarious angle into a 30 foot deep channel that has meandered into it. Heavy timbers are now dropping off the wreck and being swept away by the current as sport divers are fighting a losing battle to map the site before nothing is left.

There is an urgent need to inventory and identify threatened underwater sites, and then to fund cooperative efforts between sport divers and archaeologists to study and preserve these vessels before it is too late. We have nominated the Bead Wreck and other Revolutionary War vessels in the Crosswicks Creek to the State and National Register of Historic Places in the hopes of intersting some state agencys, etc. in funding archaeological work, but apparently little money is specificaly available or designated for this purpose, or it is preempted by other land projects. This bill could provide funding or encourage state to specifically designate at least 10% of their Historic Preservation Funds for this purpose.

This Bill should avoid negative concepts such as a recent change in the House Bill that provides for an awkward system of reasserting U.S. title to state shipwrecks if the state does not come up with an approved plan. This sort of blackmail is not in the best interest of intelligent management of the resource by states and might foster an atmosphere of restricting public acess or discouraging innovative designs in shipwreck management. Consistency should come from what is in this Bill and the suggestions by the Advisory Committee not from legislative blackmail

The N J C D C believes that shipwrecks are a public resource and should be open to the public, We believe that shipwrecks are not the exclusive monopoly of archaeologists, salvors, or anyone else, but that an intelligent management program based on openness and cooperative effort is what will best serve the development and preservation of the resource. The Bill should encourage this idea, and encourage innovative designs by states to reach this goal.

Sincerely
Jack Fullmer
Jack Fullmer
Legislative Committee
N J C D C

P.S. I would suggest getting rid of the idea of embedded in state land as almost every shipwreck I ever saw was embedded and I'm afraid embedded will be confused with historic.

Senator **Wirth**. Thank you very much, Mr. Fullmer.

As I noted at the beginning, all of your statements will be included in full in the record, and we will keep the record open for two weeks for additional material that you might like to add or which might come in response to questions today.

Senator Bradley?

Senator **Bradley**. Thank you very much, Mr. Chairman.

Let me thank all the witnesses for their testimony, and in particular Mr. Fullmer and Mr. Maddox because they come from New Jersey in addition to the substance of their testimony.

I was particularly interested in what you said, Jack, about the partnership with the sport diving community. I guess that the answer to the question why the advisory committee is selected to write guidelines is, basically, because they seem to be well-versed in protection and restoration. There is another point, that they are not suggesting regulations to the State. They are only suggesting guidelines.

But I think your point is probably well taken. Why not make it a partnership in some way. What would be your specific suggestion as to how to broaden the input to other interested parties?

Mr. **Fullmer**. Well, basically, I think we would go along with the idea of this fisheries council idea sort of where people that utilize the resource are involved in making the advisory guidelines.

Senator **Bradley**. So that the fisheries council would be a part of——

Mr. **Fullmer**. No. The fisheries council concept of involving people that utilize the resource.

Senator **Bradley**. Right.

Mr. **Fullmer**. It is not a fisheries council. It is people that are involved with the resource, utilize the resource, would be involved in making advisory guidelines.

Senator **Bradley**. And you want something more than the bill language which says that there should be consultation among sports divers and archaeologists and salvors.

Mr. **Fullmer**. Exactly.

Senator **Bradley**. So, you want something a little bit more than consultation. Is that it?

Mr. **Fullmer**. Right.

Senator **Bradley**. OK. If I could ask Tom Maddox. Basically you said that your business is pretty good. It is one of the 100 largest dive shops in the country. And I think that's great. Have you had any conflicts at all with the State as you have seen diving business increase? Any conflicts at all?

Mr. **Maddox**. We have seen misunderstanding with the State. As I have mentioned in my testimony later on, which I didn't get to talk about, we have sponsored and privately funded a number of the projects that are taking place on the Mullica River with no return on our investment other than educating the general public and providing the State with good information.

Of course, the media got a hold of that, and drew up some attention. And we did have some divers go out there to see what was going on. When I say "we", I mean divers that I know, customers of mine. And one was actually—they tried to arrest him for being in the Mullica River by the State Marine Police Bureau who were under the impression that it was against the law to dive there. It turned out that the diver was a State Trooper, and everything kind of got out. [Laughter.]

But letters had been written all the way to the attorney general's office. And it seems that the problem with trying to police this bill becomes very self-evident. You hear talk about Florida and every place, nice warm waters. New Jersey has the majority of shipwrecks, and you are not going to see them all and you can't police them all. And I think that this bill just adds to confusion. I think it will make a lot of hard feelings. And as Mr. Fullmer testified, I think that it will do away with the cooperative effort between the private sector and the State where I believe that that cooperation should be encouraged.

We are made to believe that as sport divers we rape the wrecks and we pillage the heritage. That is not true. We are there to provide it. Again, as I mentioned in my testimony, I made references to the thousands of dollars spent, the thousands of man-hours provided by private sectors to bring education of our maritime heritage to the American public.

Senator **BRADLEY**. Are you familiar with the State's proposal? Are you familiar with the State of New Jersey——

Mr. **MADDOX**. Concerning their legislation on this bill?

Senator **BRADLEY**. Yes. They strongly supported the shipwreck bill——

Mr. **MADDOX**. I am aware.

Senator **BRADLEY** [continuing]. Then submitted a proposal as to what they would do to try to deal with some of your own concerns.

Mr. **MADDOX**. I understand, but I also have other problems with that proposal as well——

Senator **BRADLEY**. You do.

Mr. **MADDOX** [continuing]. Particularly with the permit process.

Senator **BRADLEY**. Well, let's have one legislature at a time.

I'd like to then ask Mr. Dorwin. Mr. Gleason didn't come today?

Mr. **DORWIN**. He was unable to attend due to a prior commitment.

Senator **BRADLEY**. He was unable to attend?

Mr. **DORWIN**. That's correct.

Senator **BRADLEY**. Well, I don't know if you can answer the questions. But Skin Diver is the oldest and biggest magazine. Is that not correct?

Mr. **DORWIN**. That is correct.

Senator **BRADLEY**. And has it been growing?

Mr. **DORWIN**. Yes, it has been.

Senator **BRADLEY**. And have sales been increasing?

Mr. **DORWIN**. Yes, they have been.

Senator **BRADLEY**. What does the growth mean to the sport in your opinion?

Mr. **DORWIN**. First of all, I am an archaeologist. I am not——

Senator **BRADLEY**. OK, well, you don't need to answer that question.

Mr. **DORWIN**. OK.

Senator **BRADLEY**. Let me ask you this. Are you aware that a copy of the bill has never been published in Skin Diver Magazine?

Mr. **Dorwin**. No, I was not.

Senator **Bradley**. Don't you think it would be reasonable to put the text of the bill in there—maybe it's a short bill—so that everybody can see what it says? You might convey that to Mr. Gleason.

Mr. **Dorwin**. I will do so.

Senator **Bradley**. Are you aware that Congressman Bennett has written the magazine several times to refute the charges that have been made by the magazine about the bill?

Mr. **Dorwin**. I am sure Mr. Gleason is aware of that, yes.

Senator **Bradley**. Are you aware that at no time has the magazine printed any one of Congressman Bennett's letters?

Mr. **Dorwin**. No, I am not aware of that.

Senator **Bradley**. OK.

Mr. **Dorwin**. However, Senator, I would also——

Senator **Bradley**. You know, I was expecting Mr. Gleason, obviously.

Mr. **Dorwin**. I can understand that. [Laughter.]

Let me say this.

Senator **Bradley**. He didn't come, so you can give him the information.

On the State law question, I know that there is a great deal of concern on the part of divers about the State being in control of this. But there are 27 States that now have laws that deal with sport diving. And not one of them—not one of them—requires a permit for sport diving or does anything to restrict access.

So, what I would like to do is try to reassure you that we want to take your legitimate concerns into consideration. I think that you have made some good points, and I thank you for your testimony.

Senator **Wirth**. Thank you all very much for being here. We greatly appreciate it and look forward to working with you and having your input as this process moves forward.

Our second panel this morning includes Ms. Anne Giesecke of the Underwater Society of America in Washington, D.C.; Mr. Eric Taylor, the Assistant Attorney General of the State of Florida, Tallahassee, Florida; Mr. George Bass, Professor of Nautical Archaeology, Texas A&M, College Station, Texas; and Mr. J. Revell Carr, Director of the Mystic Seaport Museum, the National Trust for Historic Preservation, Washington, D.C. And Mr. Carr is accompanied by Mr. David Doheny, the Vice President and General Counsel of the National Trust for Historic Preservation, Washington, D.C.

While our witnesses are coming to the table, I wanted to say, Senator Bradley, and for the record, that the first State to pass a law regulating shipwrecks was the State of Colorado. That occurred in the early 1960s, 1963 I believe. And that has added further encouragement to my support for your efforts in this legislation. [Laughter.]

It is true.

Senator **Bradley**. I know. I know.

Senator **Wirth**. Thank you all very much for being with us, and you all are familiar with the rules of the subcommittee. And perhaps we could just go through in the order in which I introduced all of you. And is it Giesecke? Is that right?

Ms. **Giesecke**. Yes.

Senator WIRTH. Perhaps we could start with you, Ms. Giesecke, and as with the other witnesses, we will include your statements in full in the record and would hope that you could summarize your statements in three minutes or less. And we have the timer in front of the chair. When you start, that will go on. Ms. Giesecke, thank you for being here.

STATEMENT OF ANNE G. GIESECKE, LEGISLATIVE DIRECTOR, UNDERWATER SOCIETY OF AMERICA, ON BEHALF OF THE NEW YORK DIVERS ASSOCIATION, INC., THE CHAMPLAIN MARITIME SOCIETY OF VERMONT, AND THE DIVING EQUIPMENT MANUFACTURERS ASSOCIATION

Ms. GIESECKE. Thank you. My name is Anne——

Senator WIRTH. You will have to pull your microphone right over close so everybody can hear there.

Ms. GIESECKE. How's that?

Senator WIRTH. They are not high tech mikes.

Ms. GIESECKE. Is that better?

Senator WIRTH. That's much better. Thank you.

Ms. GIESECKE. I am here today to speak for the Underwater Society of America, the largest sport diving organization in the United States, and the New York Divers Association, Incorporated, and the Champlain Maritime Society of Vermont.

In 1983 the Underwater Society of America made a commitment to represent sport divers in the Federal discussions of shipwreck bills. The Diving Equipment Manufacturers Association and other organizations joined our efforts in 1984. Because of the large number of supporters who wanted to testify and the few people that are on the panel for the purposes of this hearing, I will also be representing the Diving Equipment Manufacturers Association.

We are here today to testify in support of S. 858. We would like to thank all the Senators who have sponsored and cosponsored and taken an interest in this bill. The primary purpose is to recognize the State's authority to control the excavation of State land for the purpose of recovering embedded and historic shipwrecks. The bill accomplishes this purpose by declaring that the States have title to shipwrecks that are embedded in State land and in coralline formations or eligible for the National Register of Historic Places.

The bill is needed for two reasons. First, there is a clear need for management. Environmental conflicts often occur when salvors are looking for historic shipwrecks, for example, the dynamiting of coral reefs or the disruption of recreational swimming and diving.

The second reason the bill is needed is to decrease the costs to States of unnecessary litigation. State authority has been challenged in Federal court on six occasions. And on one occasion the Federal court took jurisdiction. If the bill passes, no future litigation on this jurisdictional question will add to the $20 million the taxpayers have already spent. Moreover, the bill will not cost the Federal Government any money and will not expand the Federal bureaucracy.

Our view is to let the people of New Jersey develop a grant system or a fisheries historic preservation council system. Let the Floridians deal with their commercial salvors.

Sport divers are a law abiding group who have worked and will continue to work with State legislatures and bureaucrats to develop suitable State laws and programs for historic wrecks and artificial reefs.

Every year more than 25 groups sponsor through participant funding more than 50 projects to map and excavate shipwrecks. But if you take the example of the Champlain Maritime Society, you are not going to see a headline, "Things are Going Great in Vermont." It just doesn't happen.

The States administer shipwrecks. There is no need to distort the Federal Admiralty Court to administer archaeological sites.

The majority of sport divers will not be affected by this bill. Even the majority of wreck divers will not be affected.

In conclusion, we support the continuation of assignment of title to abandoned shipwrecks to the States. It is the simplest, clearest management system.

The sport divers and other interested groups who know their own interests and their own resources should be allowed to continue to evolve appropriate systems to manage their States' shipwrecks. The management system for a prehistoric canoe in North Dakota need not be the same as that for a Spanish galleon in Florida or the World War II fleet in Truk Lagoon.

Thank you.

[The prepared statement of Ms. Giesecke follows:]

TESTIMONY BY ANNE GIESECKE,

LEGISLATIVE DIRECTOR FOR THE UNDERWATER SOCIETY OF AMERICA,

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,

SEPTEMBER 29, 1987, ON S.858,

A BILL APPLYING TO ABANDONED AND HISTORIC SHIPWRECKS

The Underwater Society of America is the largest volunteer sport diving organization in tha United States. Established in 1959, the Society now has over 8,000 members. Since its incorporation, the Society has promoted the enjoyment of diving and acted as spokesman and protector of the sport.

In 1983 we made a commitment to represent the interests of the sport diving community; almost 3 million people, which, previously, had no effective voice in the discussion of shipwreck bills. The Diving Equipment Manufacturers Association along with other sport diving organizations, joined our efforts in 1984. We are here today to testify in support of S. 858.

The primary purpose of S. 858 is to recognize each state's authority to control the excavation of state lands for the purpose of recovering embedded and historic shipwrecks. The bill accomplishes this purpose by declaring that the state has title to shipwrecks which are either embedded in submerged lands, or coralline formations, or are eligible for the National Register of Historic Places.

The bill is needed for two reasons. First, there is a clear need for management. Environmental conflicts often occur when treasure hunters are looking for shipwrecks. Dynamiting of coral reefs, dredging of endangered turtle nesting habitat, excavation of shellfish beds, and disruption of recreational swimming and diving are examples of the activities that the states need to control. The bill meets this need by clearly stating that the state has title to the land and all that is embedded in the land. The bill addresses the state's right to permit the excavation of state land, and the state's right to spend money on the creation of underwater parks, on the conservation of recovered artifacts, on public education, and on displays about shipwreck sites.

The second reason the bill is needed is to decrease the costs to the state caused by unnecessary litigation. State authority has been challenged in Federal Court on six occasions. In one case the Court assumed jurisdiction over the excavation of state land for the purpose of recovering shipwrecks, without regard for environmental or recreational concerns. More than 35 cases are still pending. If S. 858 passes, no future litigation on this jurisdictional question will add to the $20 million that the state taxpayers have spent. Moreover, S. 858 will not cost the Federal government any money and will not expand the Federal bureaucracy.

The state's ability to issue or deny permits for activities on state lands is essential to good management. An "after the environmental damage has been done" case-by-case Federal Court approach to each archaeological site would be burdensome to those states attempting to manage intensively used areas such as ports and state parks.

Over the years, states have worked closely with sport divers, they have recognized that sport divers are discovering and studying historic shipwrecks and are also major contributors to many local economies. At least 80 % of the known shipwrecks have been discovered by sport divers, 15% by state projects and fisherman, and 5% by treasure hunters.

If S. 858 passes we expect that states will continue to protect historic shipwrecks and encourage sport diving on wrecks. States such as Michigan, Vermont, South Carolina, and Florida have encouraged sport diving by producing publications, creating underwater parks, placing moorings near wrecks, and sinking ships as dive sites.

Since the 1950's, states have managed historic shipwrecks archaeological sites as part of their historic preservation programs and, since 1966, have applied minimum national standards to their management efforts. These standards define what is historic and set forth management procedures that incorporate: 1) public participation on decision-making boards, and 2) public hearing and appeals processes. Historic shipwreck projects are eligible for grants and, in addition, 13 states provided monetary compensation to private sector profit groups. There have been problems in the past involving state permits and contracts, yet these conflicts have been judiciously resolved by state courts, and citizens have always had a forum for conflict resolution.

States manage many offshore resources including major sectors of the economy such as fishing and oil and gas. The disposition of artifacts recovered from shipwrecks has not been a major administrative burden or economic benefit. We expect that states will continue to accession and deaccession their cultural resources for parks and museums for the public benefit.

In reference to proposals for a strong Federal role in the management of shipwreck resources, it seems to us redundant and expensive.

States already administer shipwreck archaeological sites, there is no need to substantively distort the Federal Court system, which applies to ships and cargoes that are in imminent danger, to administer archaeological sites. The establishment of a complex court filing system will require increased tax support for the Federal Court and increased state taxes to support state participation. Sport divers are understandably adverse to paying higher taxes for the purpose of being excluded from dive sites. There are probably only two commercial operators working in the United States who might benefit from this salvor subsidy on mining old wet wrecks. There are more than 3 million sport divers who stand to lose access to their favorite dive sites.

As an alternative, conditioning the state's authority to own shipwrecks would also require the development of a costly Federal bureaucracy. If the state's authority is conditioned, in any manner, an administrator such as the state Governor, the Secretary of the Interior or of Commerce must determine that the state law meets the conditions of the Federal law. If the state law did not meet the conditions, then there would be the need to establish a Federal bureaucracy to administer shipwrecks. Such expensive and drastic measures seem unnecessary when 1) the states have not done a bad job of managing these resources, and 2) the Secretary of the Interior already controls much of the state's historic preservation activities through the National Register of Historic Places and money from the Historic Preservation Fund for state plans.

Based on current figures, only about 5% of the 12,000 or so known wrecks will be defined as historic. The historic shipwrecks are mostly prehistoric canoes, canal boats, and steamboats with mundane cargoes such as cloth and shovels. Archaeological excavation of these sites is being accomplished by sport divers and college students. Every year more than 25 groups sponsor, through participant funding, over 50 projects to map and recover shipwrecks. However, most of the fishing boats, barges, ferries, and work boats that are lying on the bottom are not of interest to the treasure hunter or the archaeologist, but are a major source of recreational interest to sport divers. But not a majority of sport divers.

The majority of sport divers will not be affected by this bill. Even the majority of wreck divers will not be affected because they prefer wrecks which are not legally abandoned and that they can see, not wrecks embedded and covered with earth. As Richard Zielinski, President of the New York State Divers Association, Inc., says, "Bottom line for divers in New York is that H.R. 74 and S. 858 will have little if any impact on our diving. We should not automatically put ourselves in an adversarial role with state government regarding historical wrecks. These sites are not "finders keepers" as one national magazine editorial implies. Historic wrecks are not "our" wrecks individually but belong to all citizens of our state. Our right to dive these historic locations is not a "right" to rip them apart for our own selfish gains. Rather it is our "right" to work responsibly with the state government to administer the site for the good of all divers. I do agree with one part of that editorial. I don't want to wait around for the state to act in the diver's best interests. I think it is time to start working more with our state legislators to protect our historical sites and continue to guarantee access to all wrecks."

In specific reference to the bill, we note that the definition of "embedded" deletes the language used in the past, "that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof." We would like to see that language added to S. 858 because, although the legal definition in the bill may be clear, sport divers and state officials may better understand the more descriptive language.

In conclusion, continuation of the assignment of title to abandoned historic shipwrecks to the states is the simplest, clearest management system. With title, the expenditure of state funds for administration of permit systems, the conservation of materials for public benefit and the transfer of title to certain artifacts would be most clear. Any international claims to historic shipwrecks in state waters would be foreclosed.

The sport divers and other interested groups who know their own interests and their own resources should be allowed to continue to evolve appropriate systems to manage their state's shipwrecks. The management system for a prehistoric canoe in North Dakota need not be the same as the system for a Spanish galleon in Florida or a World War II fleet in Truk Lagoon. We support S. 858.

OPINION

"In the early morning hours of July 31st, the wind suddenly shifted to the east-northeast, and the hurricane struck with all its fury. The ships, gripped in the incredible force of the crashing waves and mighty winds of nature's most awesome phenomena, were lifted like matchsticks on mountainous crests to be plummeted in the next instant into deep troughs of the ocean. Tons of seawater crashed over the railings of the galleons and, with a shriek of the wind, drowned out the screams of the seamen washed overboard to their death." [Cobb Coin, Inc. vs. Unidentified Wrecked and Abandoned Sailing Vessel, 525 F. Supp. 186 (S.D. Fla. 1981)]. So begins U.S. District Judge James Lawrence King's decision concerning the fate of the artifacts recovered from the shipwrecks of the 1715 Spanish Plate fleet off the coast of Florida.

The intense human drama of a storm and a shipwreck captures everyone's imagination. Today, after a decade of bad weather, shipwreck enthusiasts of all kinds are finding themselves with more technology, less money, and a very mixed weather forecast for the future. Most shipwrecks have been located by fishermen. Recently many wrecks have been located by sport divers. Most shipwreck sites are destroyed by dredging and port development, but recently many wrecks have been damaged by treasure salvors and some by sport divers. A few shipwrecks have been protected by the designation of underwater parks and a few have been excavated by archaeologists.

The state as a multiple-use manager of its resources must consider the three special groups that have an interest in historic shipwrecks. The largest group is the sport diving community, with approximately two million members. The next largest is the several thousand members of the archaeological and historic preservation communities. The third group is composed of two to 20 professional treasure salvors.

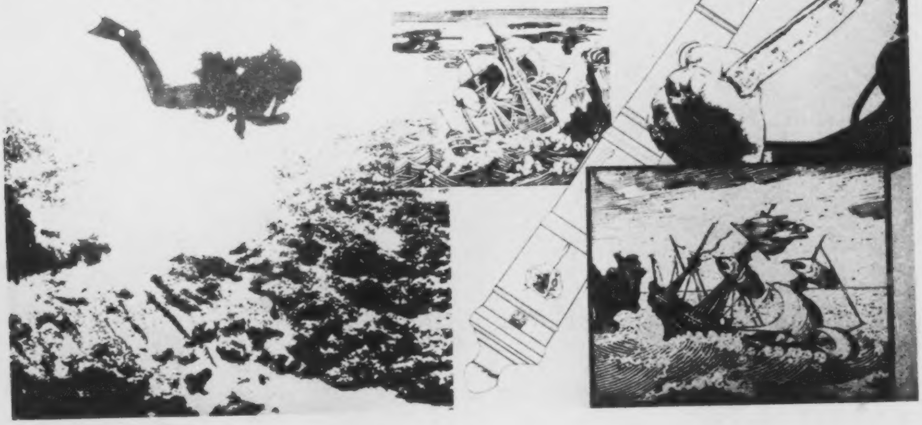
Each group has a different use for the resource. For the sport diver, the wrecks are an important focus for recreational diving; some divers like marked underwater trails explaining the wrecks, some like wrecks undisturbed by modern man, and others like to collect artifacts from wrecks. The diver's desire for unrestricted access to shipwrecks may conflict with the treasure salvor's desire for exclusive use of a wreck, and the diver's random collecting of artifacts from wrecks may conflict with the archaeologist's concern for ordered collection.

To the archaeologist, shipwrecks are an integral part of the total material cultural resource base. Certain social, economic and technological systems of the past are reflected in the patterned pieces of ship and cargo spread across the ocean floor. The treasure salvor's goal is primarily economic; he wants to minimize the cost of recovering gold, silver or artifacts that have a maximum commercial value.

"Some people can't seem to tell the difference between something that is old and wet and something that is historic," said Gary Kozak, a shipwreck enthusiast, while he was looking for shipwrecks in Lake Erie. How do we distinguish old wet wrecks from the historic wrecks which have real stories to tell about our nation's great shipping history? According to Carol Shull of the National Register of Historic Places, "historic shipwrecks must have integrity as a shipwreck, for example, an anchor is not a shipwreck. The shipwreck must then fall into one or more categories of historical significance; it must be associated with a famous event or person, have artistic merit or tell something that isn't available elsewhere. Only about six percent of the known shipwrecks meet these standards."

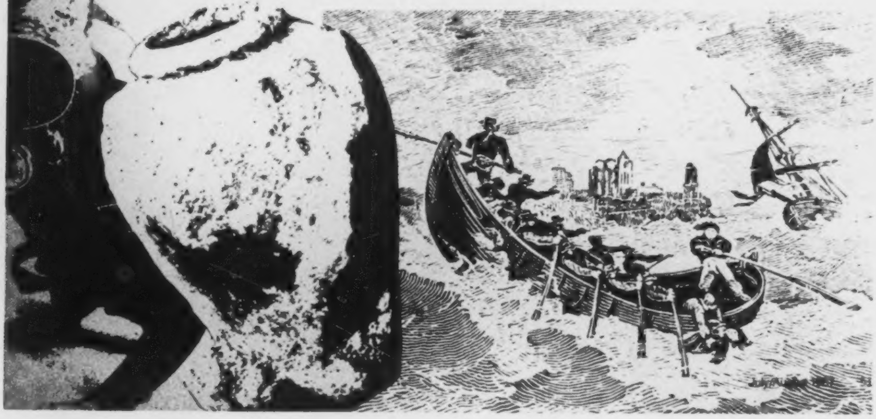
Yet one man's junk is another man's treasure. Distinguishing between what goes in a goodie bag and on someone's mantel and what goes in an artifact bag and into a museum may not be easy

The Abandoned Shipwreck Bill: Protecting Our



Threatened Cultural Heritage

by ANNE GIESECKE



Pirate treasure of silver pieces of eight, jewels and gold bars—these are the dreams of Treasure Island and Peter Pan. Dreams are very important but it is important in order to glimpse our past. Archaeological excavations on historic shipwrecks are different from wreck diving for sport. Archaeological excavations are done on wrecks to recover information and artifacts that will tell a story about our past. Wreck diving is done because it is a challenging test of diving skills and to collect items that will have a personal interest to the diver.

Even so, sport divers and underwater archaeologists have a lot of common history. Underwater archaeology is only about 25 years old. Robert Marx, a well-known underwater archaeologist, was one of the first divers to be interested in historic shipwrecks. Marx notes, "when I started in 1950 diving equipment was experimental. No one was called an underwater archaeologist and most land archaeologists didn't consider shipwrecks as having any historic value." In the early 1960s, archaeologist Peter Throckmorton and George Bass, Archaeological Director of the Institute of Nautical Archaeology, first used archaeological methods to excavate a 3,000-year-old shipwreck in the Mediterranean and began a new era in archaeology. Today East Carolina University and Texas A&M University have programs suited specially to students interested in underwater archaeology. According to Gordon Watts of East Carolina University, best known for his dives on the *USS Monitor*, "students have come into the program as a result of their interest in diving. All of our major field projects have used volunteer sport divers and students and have been very successful."

Throughout the United States, sport divers and archaeologists form teams researching and diving on about 20 historic wrecks each summer. Sport diver and archaeologist cooperation is as old as their common interest. The *Defense*, a 1779 privateer sunk in Maine waters, was excavated by 176 sport divers between 1975 and 1981. Virginia's Yorktown project to excavate a British ship sunk in 1781 which began in 1978 and will finish next year, has been successful because of sport diver participation. Today sport diver clubs are making important contributions like the Broward County Historical Commission projects in Ft. Lauderdale, Florida working on wrecks which are saying important things about nineteenth-century shipping along the East Coast and the Caribbean.

During the last two years Florida has been the scene of intense interest and activity. State archaeologist Jim Miller wants "to allow as many people to work as possible but there are a lot of interests." Sport divers and archaeologists are not the only ones interested in the water. Fishermen, oil and gas men, boaters, naturalists, coastal residents, and many others are also interested. "We have our best relations with sport divers who dive prehistoric sites in lakes and rivers," Jim says, "but even with our short staff we want to promote diving and enhance everyone's experiences. In 1987 we hope to establish an underwater park on one of the 1715 wrecks. But we will need everyone's cooperation. If everyone picks up one item everything will be gone in a month or two and no more park." Party boaters and charter boat captains may be threatening their own existence by mining these wrecks. Faced with the loss of dive sites and business, Michigan and Vermont have established underwater preserves where no collecting is allowed. The photography is great and repeat business has been a big boom to local economies. Thunder Bay, Michigan is a good example of where diving brings in about six million dollars a year, over the previous 1.5 million dollars without the dive business.

but legislation must consider mundane reality as well as fantasy. States want to be able to manage the multiple-use demands within their territorial waters. Title to historic shipwrecks as provided in the Abandoned Shipwreck legislation will assist in providing clear legal authority for such management. All states have legislation and programs to protect historical archaeological resources including abandoned historic shipwrecks. In addition, since 1963, 27 jurisdictions in the United States have passed specific, and remarkably similar, laws affecting abandoned historic shipwrecks. It is notable that no state (defined to include U.S. territories and possessions) prohibits sport diving on historic shipwrecks and many laws provide in some way for compensation for recovery activities undertaken by private parties.

Yet litigation to challenge state authority has been going on in federal court since 1976 and has cost the states' taxpayers hundreds of thousands of dollars and cost the salvors almost as much. Hundreds of thousands of dollars that could have gone to the excavation and preservation of exciting shipwreck sites was directed to the federal versus state conflict. The primary impact of the proposed federal legislation will be to end expensive litigation.

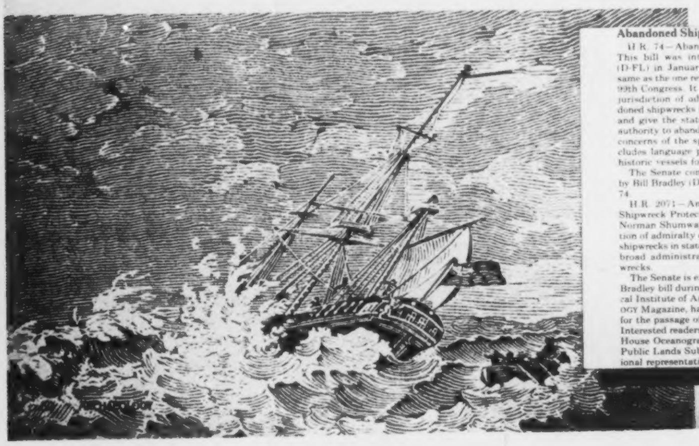
The proposed federal Abandoned Shipwreck legislation gives the states clear authority to control excavation of state land for the purpose of recovering shipwrecks, and assumes that the states will continue their current protection of historic shipwrecks. The proposed legislation would also allow archaeologists, commercial salvors and sport divers to work together in developing state programs which fit the needs of the resources and populations within a state.

The proposed legislation currently before the House of Representatives and the Senate:

- will assert U.S. title and then transfer to the states title to abandoned shipwrecks that are: (1) embedded in submerged lands of a state; (2) embedded in coralline formations protected by the state on submerged lands of a state; (3) on submerged lands of a state when included in or determined eligible for inclusion in the National Register;
- will specify that the Act will not affect any suit filed before the date of enactment;
- will reaffirm federal ownership of abandoned shipwrecks on federal lands;
- will direct the Advisory Council on Historic Preservation to develop nonbinding guidelines to assist the states and the U.S. Government in carrying out their responsibilities and to allow for recreational exploration and private sector recovery of shipwreck sites.

Gordon Watts states strong concern for the past and strong support for the proposed legislation. "Today one of the most important legacies for our seafaring heritage is being destroyed. Shipwrecks, one of our most important sources of information and material associated with our national maritime experience, are rapidly being salvaged with little or no regard for their tremendous historic value and potential public benefit. Free enterprise is not the issue. The real issue is whether we as a nation are willing to see this important and irreplaceable aspect of our past destroyed to satisfy the shortsighted commercial interests of treasure hunters or whether those resources will be protected and managed to benefit the broadest spectrum of both present and future generations of Americans. What we are looking at is preserving something that not only belongs to the present and the past but belongs to the future."

Robert Gray, Executive Director of the Diving Equipment Manufacturer's Association, also making a statement in support of the proposed legislation presents the sport diver perspective.



Abandoned Shipwreck Legislation Update

H.R. 74—Abandoned Shipwreck Act of 1987. This bill was introduced by Charles Bennett (D-FL) in January 1987, and is essentially the same as the one reviewed by the House during the 99th Congress. It is designed to remove from the jurisdiction of admiralty law the historic abandoned shipwrecks found on submerged state lands, and give the states legal title and management authority to abandoned shipwrecks. It answers the concerns of the sport diving community and includes language protecting reasonable access to historic vessels for recreational purposes.

The Senate companion bill, S. 858, sponsored by Bill Bradley (D-NJ), is almost identical to H.R. 74.

H.R. 2071—An alternate Abandoned Historic Shipwreck Protection Act of 1987, introduced by Norman Shumway (R-CA), confirms the jurisdiction of admiralty courts over historically valuable shipwrecks in state waters, and gives federal courts broad administrative powers for managing the wrecks.

The Senate is expected to hold a hearing on the Bradley bill during the summer. The Archaeological Institute of America, publisher of ARCHAEOLOGY Magazine, has made a contribution to efforts for the passage of this abandoned shipwreck bill. Interested readers should contact members of the House Oceanography Subcommittee, the Senate Public Lands Subcommittee, and their Congressional representatives.

"Each year recreational divers discover hundreds of new wrecks and artifacts. By identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door to follow-up by the archaeological community on those items with significant historical value. The result is that the public gains awareness of a history that would otherwise be lost, were it not for the recreational divers' efforts."

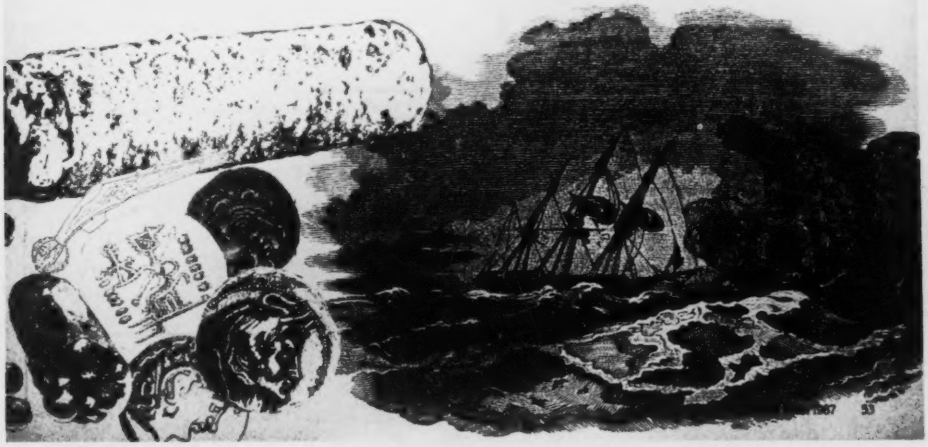
George Bass, Professor at Texas A&M University, confirms Gray's position. "Who would go to an amateur brain surgeon? There are well-meaning people who claim cures for cancer but society does not allow them to practice without proper credentials. Amateur archaeologists have an important role to play, but mainly in locating wrecks and in assisting professionals to excavate them. I have never worked without amateur divers on my staff."

Mel Fisher, President, Treasure Salvors, Inc., however, referring to the federal legislation confirming the states' claim to historic shipwrecks has stated, "I think what this boils down to really is nationalizing the salvage industry. I think it goes against all free enterprise and American ideas.... The salvors are dedicated to preservation and archaeology in museums.... We are trying to make a living at it, you know, and that is only part of it. It is not making a living, but we really are dedicated to it..."

In contrast, Bob Marx states "Now I would like to state in the most forceful way possible that I have learned that no one, no matter how lucky or skillful, can ever make a reasonable living from the commercial salvage of ancient shipwrecks. I have been one of the most successful salvors in the field and have found millions of dollars worth of treasures and artifacts, yet after paying all the costs involved in the search, recovery, and preservation of the artifacts, not to mention the shares paid to financial backers, governments, and the divers employed on each venture, I have not made a proper living from this work. I have supported my family with money made from my books, articles, documentaries and lecturing. The only people who make any big money in this field are those who get gullible people to invest in wildly hyped, highly publicized treasure hunt schemes which grossly exaggerate the actual amounts of treasure."

The only historic shipwreck sites which are clearly protected are those in National Parks. According to Dan Lenihan of the National Park Service, "the National Park Service considers all archaeological sites under its jurisdiction whether or not they are covered by water, as part of the national patrimony that it is mandated to protect. This means that shipwrecks and submerged sites are accorded the same protection and interpretative attention they would receive if they were prehistoric ruins or historic buildings. The Service has a very open policy regarding visitation of shipwrecks by sport divers but has denied all applications for commercial salvage and park rangers have arrested divers caught vandalizing sites."

All states currently hold title to the historic shipwrecks in their waters and many have designed laws based on their size, the interest of their populations, and the kinds of historic shipwrecks in their waters. What many states have not done is to take responsibility for implementing their laws. States like Michigan have established underwater parks, other states have not listed even one shipwreck on the National Register of Historic Places. When implementing shipwreck laws, states must balance commercialism, recreation, education, and research. Passage of legislation that gives the states clear title to historic shipwrecks in state waters and consequently avoids federal litigation will provide an anchor for many significant state programs. These programs can then move from their becalmed state and cruise to new lands of the past. ☐



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Shipwrecks: The Past in the Present

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Abstract *Historic shipwrecks are a recently recognized group of historic resources. These shipwrecks attract sport divers, archeologists, and treasure hunters. States have always claimed the historic shipwrecks embedded in their submerged lands. States manage these resources as part of their historic preservation programs. However, since 1981, state authority has been challenged by the federal court sitting in admiralty. Cases have been decided in Florida, Massachusetts, Maryland, Texas, and Georgia; however, only one Florida case went against the states but the expensive litigation has been a drain on state treasuries.*

Bills currently before the U.S. Congress will affirm state title and encourage states to put effort into state programs for historic shipwrecks. This article briefly describes the populations interested in shipwrecks, current case law, state law and state programs, and finally the federal legislative proposal.

Introduction

"In the early morning hours of July 31st, the wind suddenly shifted to the east-northeast, and the hurricane struck with all its fury. The ships, gripped in the incredible force of the crashing waves and mighty winds of nature's most awesome phenomena, were lifted like matchsticks on mountainous crests to be plummeted in the next instant into deep troughs of the ocean. Tons of seawater crashed over the railings of the galleons and, with the shriek of the wind, drowned out the screams of the seamen washed overboard to their death." (*Cobb Coin, Inc. v. The Unidentified Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 [S.D. Fla. 1981]). So begins U.S. District Judge James Lawrence King's decision concerning the fate of the artifacts recovered from the shipwrecks of the 1715 Spanish Plate fleet off the coast of Florida. A decision which challenged state laws.

The intense human drama of a storm and a shipwreck captures everyone's imagination. Today, after a decade of bad weather, shipwreck enthusiasts of all kinds are finding themselves with more technology, less money, and a very mixed legal weather forecast for the future.

The purpose of this article is to provide a historical overview of submerged shipwreck management so that the current conflict between state governments and the federal court and the development of congressional legislation aimed at resolving it can be properly evaluated. Since the essence of this conflict involves ships in state waters, this article is focused on historic shipwreck resources under state jurisdiction. Upon examination of the management system currently in place, the article will seek to reaffirm states' management in the form of legislative proposal H.R. 3194 as a solution to the conflict over submerged shipwrecks in state waters. H.R. 3194 passed the House of Representatives in 1984 and was reintroduced in both the 99th (H.R. 3558) and 100th (H.R. 74) Congresses.

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Shipwrecks as Cultural Resources

It is important to begin by defining terms and specifically what distinguishes a historic shipwreck from other wrecked and sunk vessels.

In the United States, historic shipwrecks are specifically defined in the laws of 27 states (states defined to include the territories and possessions). Similar classes of shipwreck resources are protected by each of the state's definitions but there is variation. The primary categories of resource description are: (1) archaeological/historical; (2) man-made; (3) ship/vessel; and (4) chronology. Ten states (Alaska, Colorado, Hawaii, Indiana, Minnesota, Montana, New Hamshire, New York, North Dakota, Northern Mariana Islands) refer to the historical or árchaeological quality of the resource. Two states, Maine and Wisconsin, refer to the man-made quality of the resource. Six states (Florida, Georgia, Michigan, Mississippi, South Carolina, and Virginia) refer to ships, vessels, or water craft. Eight states define ships of a particular age. Louisiana and Texas claim pre-twentieth century ships. North Carolina, Rhode Island, Vermont, and Guan claim ships that have been abandoned for ten years or more. Arizona and Massachusetts claim ships that are 100 years old or more, and, in addition, Massachusetts claims ships valued at more than $5,000. Oregon claims ships that are 75 years old or more.

The definition of historic refers to a relative value and the United States, as other countries have, has developed a process for making decisions about what is historic. In the United States, the process culminates with the Secretary of the Interior and recognition of the resource in the National Register of Historic Places. The National Register does not provide protection to sites, but listing is an indication of the historical significance of a resource.

During the 1960s people began to value shipwreck sites as archaeological sites rather than as sources for commercial salvage. New technologies made oceans and other bodies of water accessible as they had never been before. SCUBA (Self Contained Underwater Breathing Apparatus) equipment, invented by Jacques Cousteau during World War II, was developed to be inexpensive and sufficiently safe for sport, so SCUBA diving became popular. At about the same time, shipwrecks were first defined as archaeological sites in the United States when Peter Throckmorton, a marine surveyor working in the Mediterranean, got the attention of George Bass, a graduate student at the University of Pennsylvania and persuaded him to examine pre-Christian era wrecks off Turkey and Greece. Bass recognized and wrote about these sites as archaeological treasures.

This impetus and the new accessibility motivated divers to locate and identify shipwreck sites; for example, in Lake Champlain, Revolutionary War ships sunk in Valcour Bay and the British fleet destroyed during the War of 1812 in Plattsburgh Bay were listed as national historic landmarks in 1960–1961. In 1965, some gold coins washed up on a beach in Florida, which led to the location of the 1715 Spanish Plate Fleet.

Like these examples, most of the shipwrecks off the American coast were engaged in military or commercial enterprises at various stages of the country's growth. As cultural resources they provide valuable information about the historic changes in vessels and also about changes in warfare and commerce. About their place in history, moreover, we learn not only from their cargoes, but also from the utensils and other artifacts of daily life that they carried and that sank with them: plates, glassware, cutlery, and clothing, for example. As such they can be understood as potential museums of temporal context, preserving a collection of items and also a narrative segment of history which their routes, logs, and wreckage present to the archaeologist as a unique challenge to preserve. In some cases, they may provide extremely rare evidence. The history of smuggling illustrates, for example, that the excavation of shipwreck sites may be the only method of gathering information about some types of human activities (Gould, 1983).

For the purpose of this article, shipwrecks may be divided into four categories. First, there are ships which are in the process of sinking or have sunk very recently; associated with these wrecks are efforts to recover the ship or cargo, and these are the claims that are addressed by the federal court sitting in admiralty. Next are ships which have sunk and settled on the bottom some time ago, either lost with no further efforts being made at recovery, or left on purpose to attract fish. Hundreds of ships have been sunk as artificial reefs, 144 off the coast of Florida alone. Third are buried wrecks, ships which were lost a long time ago and have been buried by sediment. Fourth are historic shipwrecks which may fall into any of the first three categories; these wrecks, defined as having special cultural value, may be sitting on the submerged surface, but are generally old enough to be buried or embedded in sediments. Not all wrecks sitting on the bottom or embedded are historic. Of the 12,427 known wrecks in the United States waters that are more than fifty years old, only 5.8 percent are considered historic according to state and federal criteria; 93 percent of those are in state interior or coastal waters. All known historic wrecks are buried or embedded in bottom sediments except the *U.S.S. Monitor*, the U-352, and the fleet at Truk Lagoon which are in federal waters and are lying on the surface of the seabed.

There are currently 41 National Register shipwreck sites and districts with approximately 100 shipwrecks. Twenty-eight of these sites with approximately 50 abandoned shipwrecks are on or in the submerged lands of the states.

A brief review of the information shows that the sites cover the range of American history from Spanish exploration, the 1554 Spanish Plate Fleet (Texas), to the results of modern conflict, the German U-352 (Atlantic), and the Japanese Imperial Pacific Fleet (Truk); but warships dominate over trade ships and the prehistoric component is entirely absent.

The wrecks in these studies also showed a concentration in areas of natural hazards. Although work to locate and evaluate shipwrecks in both state and federal waters has begun very recently, enough work has been done to indicate a rich resource base for the understanding of America's maritime heritage.

Interest in Shipwrecks

Historically, federal and state governments have had the greatest impact on the shipwreck resource base through large-scale port development and channel dredging, and have affected the resource area by regulating a broad range of economic and environmental concerns including fishing, oil and gas, clean water, and endangered species. Three special interest groups have an interest in historic shipwrecks. The largest group is the sport diving community, with approximately 2.5 million members. The next largest group is the several thousand members of the archaeological and historical preservation communities including about 200 archeologists trained in underwater research. The third group is composed of four to twenty professional treasure salvors in the country (Velocci, 1980). The increasing demand on the historic shipwreck resouce base by these three groups has created a multiple-use management problem much like demands made on other finite resources in the environment.

Each group has a different use for the resource. For the sport diver, the wrecks are an important focus for recreational diving; some divers like marked underwater trails explaining the wrecks, some like wrecks undisturbed by modern man, and others like to collect artifacts from wrecks. The diver's desire for unrestricted access to shipwrecks may conflict with the treasure salvor's desire for exclusive use of a wreck, and the diver's random collecting of artifacts from wrecks may conflict with the archeologist's concern for ordered collection.

To the archeologist, shipwrecks are an integral part of the total material cultural resource base. Certain social, economic, and technological systems of the past are reflected in the patterned pieces of ship and cargo spread across the ocean floor. The treasure salvor's goal is primarily economic; he wants to minimize the cost of recovering gold, silver, or artifacts that have a maximum commercial value.

To briefly review the elements, the conflict is over jurisdiction, that is, power to make decisions concerning a resource. The resource consists of buried and historic shipwrecks on or in state submerged lands. The public interest of the federal court under the admiralty system is to return goods to commerce and the interest of the states is multiple-use resource management. As part of the public interest to be considered by the governing group are the interests of archeologists, sport divers, and treasure salvors. Archeologists see some shipwrecks as bits of history, sport divers see opportunities for recreation, and treasure salvors see monetary gain. The forum for the resolution of the conflict between the federal court and the states has been the United States Congress.

The bill currently before Congress would clearly settle the jurisdictional question between the states and the federal court in favor of the states. The state approach would allow local populations including sport divers, salvors, and archeologists to evaluate local resources and devise cultural resource management systems suited to their individual state needs. The following two sections detail the state approach.

State Laws

The jurisdictional claims of the state governments may be illustrated best by a review of the state laws that specifically address shipwrecks. The public interest of the states is multiple-use management of resources. Shipwreck resources have generally and reasonably been managed in the context of the water or coastal management priorities of the states. The first state ("state" will continue to be used to refer to jurisdictions of the United States including states, territories, possessions, and the District of Columbia) to pass legislation which specifically addressed historic shipwrecks was Colorado in 1963. Colorado is typical of many Western states, that is those west of the 98th meridian (about the Mississippi River). Colorado is short of water and follows a principle of prior appropriation of water: first come, first served. The laws regarding water and the lands beneath the water are carefully drawn to protect individual and state rights to use and to allocate a scarce resource. The definition of the state's area of jurisdiction, the state's claim to title to the shipwrecks, and the state's permit process reflect the priority concern for the protection of water resources. This strong concern for water management explains the existence of laws specifically addressing shipwrecks in states where few, if any, shipwrecks have been located.

In contrast to the Western water rights system is the Eastern system of riparian rights. Where water is more plentiful, a system of use, return, and reuse of water by those adjacent to the water source is feasible and has become customary. Laws concerning shipwrecks in the Eastern states tend to have been developed in response to comprehensive historic preservation legislation and to the location of particular shipwreck sites rather than as part of water resource systems. In Florida, for example, legislation developed between 1965 and 1967 in response to the discovery of artifacts from the 1715 Plate fleet. Florida now lists 176 historic shipwrecks. The other states to develop laws in the 1960s are: Georgia, Maine, North Carolina, and Texas. Since 1970, 22 additional states have passed laws specifically addressing shipwrecks.

Although the laws developed in different legal and resource contexts over a 20-year period from 1963 to 1983, the laws in Eastern and Western states are remarkably similar. It is notable that no state prohibits sport diving on historic shipwrecks. Indeed 13 out of the 27 laws provide state compensation to private parties for recovery activities.

The state laws may be compared by looking at six categories which are common to each of the states' laws: (1) area of jurisdiction; (2) definition of the resource (see the previous section); (3) type of state claim to the resource; (4) disposition of the artifacts; (5) penalty for violation of the law; and (6) administrator of the law. The information for these six categories is summarized in Table 1, Comparison of State Laws.

Jurisdiction

Each state defines the area of state jurisdiction to be compatible with the state law implementing the federal law which affirmed title to the land, the Submerged Lands Act (67 Stat. 29–33).

The United States has never declared authority or jurisdiction to own cultural resources beyond the territorial sea. The United States has attempted to control access to and to manage a shipwreck site beyond the territorial sea, the *U.S.S. Monitor* (16.1 nautical miles), a ship already owned by the United States, through the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431–1434). The creation of a marine sanctuary around the *U.S.S. Monitor* allows the Department of Commerce, National Oceanic and Atmospheric Administration, to fund research and provide protection for the wreck site.

The United States could, with clear international recognition, assert sovereign prerogative and claim title to wrecks within the three miles. The area beyond requires consideration of reciprocity with other nations on ownership of resources. Notably, the population and market pressures on the shipwrecks beyond three miles are considerably less than in the state waters.

Definition of the Resource

Notably, state ownership is asserted only over abandoned property. The quality of abandoning property has two parts: first, desertion; and second, the intention of not returning or repossessing an object so that it is available to another. The desertion of a vessel in danger of sinking is not of itself abandonment. It is also important to recognize that after an insurance company pays off the value of a ship or cargo, it is the owner of the property. However, a lapse of time of some years may indicate the intention of not returning to repossess the property and the property may be considered abandoned. Abandoned property, other than shipwrecks, becomes the property of the state or federal government. Abandoned should not be confused with lost, where the owner did not intentionally give up the property and hopes to recover the property. One should note that U.S.S. ships and C.S.S. (Confederate) ships and foreign naval ships such as World War II German subma-

Table 1
Comparison of State Laws

State	Statute Citation	Area of Jurisdiction	Definition of the Resource	Type of State Claim	Disposition of the Artifacts	Penalty for violation of the Act. Read less than (and/or) less than	Relevant Administrator
Alaska	STAT. §41.35 (1977)	land owned or controlled by the state including tideland and submerged land	historic, prehistoric & archaeological resources	title to artifacts	permit	$1,000 or 6 months, forfeit materials	Commissioner, Dept. of Natural Resources
Arizona	REV. STAT. §41.041 et. seq. (1982)	lands owned or controlled by the state	ships and vessels at least 100 years old	regulatory authority	permit	$500 or 6 months, forfeit materials	Director, Arizona State Museum
Colorado	REV. STAT. §24.8 0.401–410 (1973)	lands, rivers, lakes, reservoirs owned by the state or any of its subdivisions	historical, prehistorical & archaeological resources	title to artifacts	permit	$500/30 days forfeit materials	State Archeologist, Dept. Higher Education
Florida	STAT. ANN. §267 (Supp. 1982)	state-owned lands or submerged lands	sunken or abandoned ships	title to artifacts	contract payment	$500/6 months forfeit materials	Director, Dept. of State
Georgia	CODE ANN. §12.3 (1981)	lands owned or controlled by the state or in the territorial Atlantic or navigable waters	ancient and abandoned ships	title to artifacts	permit	$500/90 days	Dept. of Natural Resources
Hawaii	REV. STAT. §6E (1976)	lands or under waters owned or controlled by the state	historic property including underwater site	title to artifacts	permit	$1,000	Dept. of Land & Natural Resources

Indiana	STAT. ANN. §14.3.3.3–4 (1981)	under water	historic site includes shipwreck	regulatory authority	permit	$1,000/180 days	Director, Dept. of Natural Resources
Louisiana	STAT. ANN. R.S. §41.1601 et. seq. (Supp. 1982)	its tidelands, submerged lands and beds of its rivers and the sea	all sunken or abandoned pre-20th century ships & wrecks of the sea	title to artifacts	contract, compensation	$500/30 days	Commission, Dept. of Culture, Recreation & Tourism
Maine	REV. STAT. ANN. §27.373–378 (Supp. 1982)	any land or water area owned fee simple by the state, land beneath great ponds or navigable bodies of water & other submerged lands	physical entity worked or modified by human action	title to artifacts	permit	$1,000	Director, State Museum Bureau
Massachusetts	GEN. LAWS ANN. §6.179–180 (1974)	inland and coastal waters of the commonwealth	sunken ships unclaimed for 100 years or valued at $5000 or more	title to artifacts	permit, state option to purchase, permittee may retain 75% of value	$1,000/6 months	Board, Dept. of Environmental Quality Engineering
Michigan	COMP. LAWS ANN. §299.51–54 (Supp. 1982)	state owned bottomlands of Great Lakes	water craft, including equipment, property, cargo	title to artifacts	permit, disposition agreement, payment of salvage costs	$100/90 days	Sec. of State, Dept. of Natural Resources
Minnesota	STAT. ANN. §138 (1979)	public lands or waters	objects of archeological interest	title to artifacts	license	$3,000/1 year	Director, Historical Society

(continued)

Table 1

State	Statute Citation	Area of Jurisdiction	Definition of the Resource	Type of State Claim	Disposition of the Artifacts	Penalty for violation of the Act. Read less than (and/or) less than	Relevant Administrator
Mississippi	CODE ANN. §39.7 (1972)	tidelands, submerged lands, rivers, the sea	all sunken or abandoned ships, wrecks and cargo	title to artifacts	contract or permit, compensation	$500/30 days	Board, Dept. of Archives & History
Montana	CODE ANN. §22.3.421–442 (1981)	upon or beneath the earth or underwater	object significant in history, architecture, archaeology or culture	title to artifacts	permit, provided for in permit	$1,000/6 months	Historic Preservation Officer, Board of Education
New Hampshire	REV. STAT. ANN. §227.C (Supp. 1981)	bottom of navigable waters, great ponds, territorial waters	object significant in history, architecture, archeology or culture	title to artifacts	permit, disposition agreement up to 75% for permittee	$1,000/6 months	Commissioner, Dept. of Resources & Economic Development
New York	CONSOL. LAWS ANN. §14. (McKinney 1982)	underwater sites	property with significance in history, architecture, archeology or culture	regulatory authority	permit	misdemeaner (at Judge's discretion)	Commissioner, Executive Dept.
North Carolina	GEN. STAT. §121.22–28 (1981)	bottoms of navigable waters, one marine league into the Atlantic	shipwrecks, vessels, cargoes, tackle, underwater archeological artifacts, unclaimed for 10 years	title to artifacts	license, monetary fee, portion agreement	fine/2 years	Secretary, Dept. of Cultural Resources

North Dakota	CENTURY CODE §55.02,03,10 (Supp. 1981)	land or water areas owned or controlled by the state	historic or archeological value	implied title to artifacts	permit	$100 or 30 days, forfeit materials	Superintendent State Historical Society
Oregon	REV. STAT. §273.705 (1983)	submerged lands, submersible lands, bed of the sea	material remains at least 75 years old	title to artifacts	permit	$1000/6 months forfeit materials damages	Director, Div. of State Land
Rhode Island	GEN. LAWS §42.45.1 (1977)	bottoms of navigable waters, territorial sea	shipwreck, vessel, cargo, tackle, archeological specimen, unclaimed for 10 years	title to artifacts	permits, compensation	bring or defend actions	State Historical Preservation Commission
South Carolina	CODE LAWS ANN. §54.7.400 et. seq. (Supp. 1982)	bottoms of navigable waters, one marine league into the Atlantic	sunken vessels, assemblages, artifacts	title to artifacts	licensee, compensation	$10,000 or 2 years	Institute of Archeology and Anthropology
Texas	CODE ANN. §191.01 (1970)	tidelands, submerged land, rivers and sea	pre-20th century ships and wrecks of the sea	title to artifacts	contract	$1,000/30 days	Antiquities Committee
Vermont	STAT. ANN. §22.701 et. seq. (1978)	underwater	shipwreck, vessel, cargo, tackle, archaeological specimen, unclaimed for 10 years	title to artifacts	permit, compensation	$1,000/6 months, forfeit materials	Director, Div. for Historic Preservation
Virginia	CODE §10.145 (Supp. 1983)	state-owned subaqueous bottom	shipwreck, vessel, cargo, tackle, archeological specimen	title to artifacts	permit, fair share or case value	$1,000/12 months	Virginia Historic Landmarks Commission

(continued)

Table 1

State	Statute Citation	Area of Jurisdiction	Definition of the Resource	Type of State Claim	Disposition of the Artifacts	Penalty for violation of the Act. Read less than (and/or) less than	Relevant Administrator
Wisconsin	STAT. ANN. §27.012 (1973)	water area owned by the state	man-made article, implement, item	title to artifacts	permit	$100/90 days forfeit materials	Director, State Historical Society
Northern Mariana Islands	P.I., No. 3–39 §11	water surrounding the islands	artifact of historic or cultural significance	regulatory authority	permit	$1,000/3 months	Historic Preservation Officer, Dept. of Community Cultural Affairs
Guam	Chapt. XIII 13985.–42	submerged land	shipwreck, vessel . cargo, tackle, archeological specimen, unclaimed for 10 years	title to artifacts	permit	$500/6 months, forfeit materials	Department of Parks and Recreation

rine U-boats are under the jurisdiction of the U.S. Navy unless officially abandoned by the Navy. Ownership authority derives from a series of postwar agreements concerning the rights to property and respect for the war dead.

State Programs

Since the 1950s, the states have managed historic shipwreck archeological sites as part of their historic preservation programs, and they have applied minimal national standards since 1966. These minimum national standards provide for definition criteria and management procedures that incorporate: (1) public participation on decision-making boards, (2) public hearing processes, and (3) appeals processes. States have planning and management responsibilities that apply to a broad range of environmental resources and development activities. The states receive and integrate information about resources from a variety of sources in order to make project decisions and design mitigation measures. Historic resources are considered in the planning process. State courts have dealt successfully with conflicts over state permitting and contracting for centuries, and citizens have always had a forum for input.

Shipwrecks considered as archaeological sites are already eligible for the tax incentives and grants available for historic resources; some state provide additional monetary compensation for shipwreck sites. Most excavation of buried shipwrecks is now done by universities and volunteer groups under these programs. A state's ability to issue and deny permits for activities on state lands is essential to good management. An after-the-fact case-by-case admiralty approach to each archeological site would be burdensome to states attempting to manage particular areas such as ports and state parks and to permit excavation for mineral, dredge, or other purposes. Assignment of title to the states is the simplest, cleanest management system. With title, the expenditure of state funds for administration and conservation of materials for the public good and the transfer of title to certain artifacts would be clearest. Any international claims would be foreclosed.

An overview of what the states are doing to manage underwater cultural resources and, in particular, to manage historic shipwrecks with and without specific legislation was developed in 1983 by the writer, in cooperation with the National Conference of State Historic Preservation Officers. A summary of that survey follows:

Twenty-one states reported some survey work, totaling 296,201 acres since 1967. None of these figures include federal activities either by the Corps of Engineers or the National Park Service, two major participants in the evaluation of the nation's historic shipwreck resource base.

A total of 671 shipwrecks have been located and identified as historic using state or federal criteria. In all, 2,883 shipwrecks have been located, 437 by states, 2,299 by sport divers, and 147 by salvors. Because the state's responsibility is to manage the whole resource base, not just any particular wreck, a number of important coastal states have put their money into a search of historical records for historic wrecks. For example, Virginia, Texas, and California have each recorded information on more than 2,000 wrecks off each of their coasts. Their next step will be to determine what material remains of those wrecks may exist.

One may conclude from this review that state laws have been developed from different perceptions of water use and in response to different resource distributions and the needs of differing local populations. The ability as well as the need of states to be flexible is reflected in their legislation and in their state programs. Potentially the states have the interest and ability to balance the interests of the primary user groups, the sport diver's access, the salvor's commercial interest, and the archeologist's historic interest.

We must consider that, as a backdrop to diving and treasure, the oceans are man's last frontier on earth. The drama and romance of life at sea have been enhanced over the years by stories of pirates, contraband, and hidden cargoes of splendid wealth and beauty. The romantic and economic values of gold and silver have been important factors in the way shipwrecks have been recovered and in the way court cases have been decided since the sixties. The following section will discuss the legal challenges that have been made to the state laws and the consequent imposed authority of the federal court.

The Federal Court

The public interest of the federal admiralty court, to return goods to commerce, has its roots in English history during a time when commerce and piracy had reached points of significant economic impact and the admiral of a ship was the law of the sea. The admiralty system developed in the courts, rather than through legislation, during a time when there was a need for the ordered recovery of goods.

The federal court sitting in admiralty makes a salvage award considering three criteria based on rules established in the *Blackwall* (77 U.S. (10 Wall 1, 19L, Ed. 870 (1869))) opinion: (1) marine peril; (2) voluntary service, and (3) success in recovering the vessel or cargo (*Benedict on Admiralty*, 1890). Further, the court will consider the degree of danger present in the rescue, the value of the property recovered, and the time and labor expended by the salvor. In the case of abandoned property, the salvor may receive the property or the proceeds from the sale of the property.

Three important features of the court system are time, cost, and a case-by-case approach based on judge-made law. First, time is a critical consideration in an understanding of court responsibilities and procedures. There are a limited number of courts and judges and in each case all parties have full rights according to procedure. Currently, there may be a delay of as much as two years in many courts before a case is heard and then the appeal process may postpone a decision for as many as ten years. Second, cost is important to individuals filing a claim for an award with the court because the complex procedures usually require the services of a lawyer and if there are counterclaims by other parties, states, or the federal government, legal fees and court costs may escalate rapidly. Often, too, for highly specialized cases such as for historic shipwrecks, the court may request the services of a special master, a specialist, and this cost is then added to the court costs. Third, the court takes a case-by-case approach. Each judge in each district makes an independent decision based on precedent after a case is brought to court. In the realm of marine affairs where there is little statutory law there is much room for interpretation by the judges. Also critical is the concern that a wreck must be located and efforts made to recover property before there is a claim to file with the court for an award.

Unfortunately, the conflict of use concerning the submerged land often comes during attempts to locate buried shipwrecks, since the excavation of a particular site might conflict with excavation for some other purpose, such as mining, that is not part of the court's tradition.

Only a dozen cases in the history of the Admiralty Court have dealt with abandoned property. Of these cases only half have concerned shipwrecks with some historic value. As mentioned earlier, states have claimed historic shipwrecks in state waters.

Jurisdictional conflict was created when the Federal Court for the Southern District of Florida determined that contrary to state claims they had jurisdiction over a shipwreck in state waters. The decision, quoted at the beginning of this article and referred to here as *Cobb Coin,* placed the state of Florida and potentially other states in a conflict relationship with the federal court over the resource represented by buried shipwrecks. The conflict situation increased in complexity with a later contradictory court opinion in Massachusetts where the federal court determined that it did not have jurisdiction.

To date, five conflicting federal court actions have thrown into doubt the legal regulations that govern abandoned shipwrecks within state waters. In the first case, *Cobb Coin Co., Inc. v. The Unidentified Wrecked and Abandoned Sailing Vessel,* 549 F. Supp. 540 (S.D. Fla. 1982) the U.S. District Court for the Southern District of Florida held that the federal admiralty law of salvage applied to abandoned shipwrecks lying within Florida's submerged lands. The court found that the Submerged Lands Act of 1953 transferred title to the lands and natural resources of the lands beneath navigable waters to the states, but that title to abandoned wreck sites was not included in the transfer. The court found that the traditional principles of salvage govern activities associated with these shipwrecks. The court determined that the Florida statute purporting to govern shipwrecks within state waters was, in some ways, inconsistent with and was superseeded by salvage principles, and the Cobb Coin Co., Inc., was entitled to exclusive salvage rights over the wreck and cargo. The court also suggested that federal admiralty principles, as applied to the salvage of historic shipwrecks, could be fashioned to safeguard the artifacts and invaluable archaeological information associated with the shipwreck, and that the public's interest in the shipwrecks could be accommodated through a proper award of a portion of the artifacts to the State of Florida. As a result, the court currently is the overseer of five wreck sites in Florida's waters.

The U.S. District Court for the District of Massachusetts found that the State of Massachusetts had a plausible, that is a colorable, claim to an abandoned shipwreck located within state waters. This meant that any action against this vessel was in effect a claim against the state. But the Eleventh Amendment of the United States Constitution barred an action against the state without its consent. When a salvor filed a claim in federal court seeking title to the vessel, the court dismissed the action for lack of jurisdiction at the request of the State of Massachusetts. *Maritime Underwater Surveys, Inc., v. the Unidentified, Wrecked and Abandoned Sailing Vessel, Her Tackle Etc.,* CA 82-3553, slip opinion, D. Mass. (January 14, 1983) (unreported decision), 717 F.2d 6 (1st Cir.).

The U.S. District Court for the District of Maryland reached a similar decision in *Subaqueous Exploration and Archeology, Ltd., and Atlantic Ship Historical Society, Inc., v. The Unidentified Wrecked and Abandoned Vessel, et al.,* 577 F. Supp. 686 (D. MD. 1983), finding the state's claim to the vessel colorable, the action being in effect an action against the state, and the Eleventh Amendment a bar to the action.

Finally, in a complex set of actions in the Fifth Circuit, certain salvors obtained title to items recovered from a buried wreck within the submerged lands of the State of Texas after having obtained from the Texas legislature a waiver of the sovereign immunity of the state. An earlier unreported District Court decision, that was not appealed, found that the State of Texas owned the artifacts recovered from the wreck and that the Eleventh Amendment barred suit against the state. (*Platoro, Ltd., Inv., v. Unidentified Remains Etc.*) No. 81-1257, 695 F. 2d 893 (5th Cir., January 20, 1983).

In one of the opinions in the litigation, the District Court for the Western District of Texas, specifically declined to hold the salvors to the standards of expertise required of marine archeologists, as the state had urged.

In the most recent decision, the U.S. District Court for the Southern District of Georgia upheld the state's claim that the wreck was embedded on state property and that consequently title to the vessel rests with the state. In addition, the court found that under the Eleventh Amendment, and alternatively due to the salvors' failure to assert a valid salvage claim, the claim for award was denied. *Frank Chance, Paul Chance, and David Topper v. Certain Artifacts Found and Salvaged From the NASHVILLE a/k/a The RATTLESNAKE, Her Engines, Boilers, Tackle, etc.* 606 F. Supp. 801 (S. D. Ga.); affirmed, 775 F. 2d 302 (11th Cir. 1985).

The U.S. Congress

The forum for the attempted resolution of the conflict between the federal court and the states has been the United States Congress. With its public legitimacy founded on the Constitution and the election process and its formal rules and procedures, Congress is a recognized political institution for legislation of national issues. The federal court and the states recognize the authority of the institution and the Congressional legislative process has been functioning to resolve the shipwreck jurisdiction conflict since 1979.

The conflict centers on the power to make decisions concerning this resource, which consists of buried and historic shipwrecks on or in state submerged lands. To review briefly, the public interest of the federal court is to return goods to commerce and the interest of the states is multiple-use resource management. Public interest to be considered by the governing group includes the interests of archeologists, sport divers, and treasure salvors.

Legislative Proposal

The proposed federal abandoned shipwreck legislation gives the states clear authority to control excavation of state land for the purpose of recovering shipwrecks, and assumes that the states will continue their current protection of historic shipwrecks. The proposed legislation would also allow archeologists, commercial salvors, and sport divers to work together in developing state programs which fit the needs of the resources and populations within a state.

H.R. 3194 as proposed legislation currently before the House of Representatives H.R. 74:

(1) will assert U.S. title and then transfer to the states title to abandoned shipwrecks that are: (1) embedded in submerged lands of a state; (2) embedded in coralline formations protected by the state on submerged lands of a state; (3) on submerged lands of a state when included in or determined eligible for inclusion in the National Register;
(2) will specify that the Act will not affect any suit filed before the date of enactment;
(3) will reaffirm federal ownership of abandoned shipwrecks on federal lands;
(4) will direct the Advisory Council on Historic Preservation to develop nonbinding guidelines to assist the states and the U.S. government in carrying out their responsibilities and to allow for recreational exploration and private sector recovery of shipwreck sites.

Gordon Watts, an underwater archeologist known for his work on the *U.S.S. Monitor*, states strong concern for the past and strong support for the proposed legislation.

"Today one of the most important legacies for our seafaring heritage is being destroyed. Shipwrecks, one of our most important sources of information and material associated with our national maritime experience, are rapidly being salvaged with little or no regard for their tremendous historic value and potential public benefit. Free enterprise is not the issue. The real issue is whether we as a nation are willing to see this important and irreplaceable aspect of our past destroyed to satisfy the shortsighted commercial interests of treasure hunters or whether those resources will be protected and managed to benefit the broadest spectrum of both present and future generations of Americans. What we are looking at is preserving something that not only belongs to the present and the past but belongs to the future."

Robert Gray, Executive Director of the Diving Equipment Manufacturer's Association, also making a statement in support of the proposed legislation, presents the sport diver perspective. "Each year recreational divers discover hundreds of new wrecks and artifacts. By identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door to follow-up by the archaeological community on those items with significant historical value. The result is that the public gains awareness of a history that would otherwise be lost, were it not for the recreational divers' efforts."

George Bass, Professor at Texas A&M University, confirms Gray's position. "Who would go to an amateur brain surgeon? There are well-meaning people who claim cures for cancer but society does not allow them to practice without proper credentials. Amateur archeologists have an important role to play, but mainly in locating wrecks and in assisting professionals to excavate them. I have never worked without amateur divers on my staff; the president of our Institute of Nautical Archaeology, in fact, first joined my team as an amateur diver with no archeological training."

Mel Fisher, President, Treasure Salvors, Inc., however, referring to the federal legislation confirming the states' claim to historic shipwrecks, has stated, "I think what this boils down to really is nationalizing the salvage industry. I think it goes against all free enterprise and American ideas. . . . The salvors are dedicated to preservation and archaeology in museums. It would be ridiculous for us to destroy artifacts or shipwrecks, absolutely ridiculous. We are trying to make a living at it, you know, and that is only part of it. It is not making a living, but we really are dedicated to it, and if you come down to Key West and see our laboratories and exhibits, and attend some of our educational seminars, you will find out what I mean."

In contrast, according to Bob Marx, another salvor/underwater archeologist, "Now I would like to state in the most forceful way possible that I have learned that no one, no matter how lucky or skillful, can ever make a reasonable living from the commercial salvage of ancient shipwrecks. I have been one of the most successful salvors in the field and have found millions of dollars worth of treasures and artifacts, yet after paying all the costs involved in the search, recovery, and preservation of the artifacts, not to mention the shares paid to financial backers, governments, and the divers employed on each venture, I have not made a proper living from this work. I have supported my family with money made from my books, articles, documentaries, and lecturing. The only people who make any big money in this field are those who get gullible people to invest in wildly hyped, highly publicized treasure hunt schemes which grossly exaggerate the actual amounts of treasure."

The only historic shipwreck sites which are clearly protected are those in National Parks. According to Dan Lenihan, "The National Park Service considers all archaeological sites under its jurisdiction whether or not they are covered by water, as part of the national patrimony that it is mandated to protect. This means that shipwrecks and submerged sites are accorded the same protection and interpretative attention they would receive if they were prehistoric ruins or historic buildings. The service has a very open policy regarding visitation of shipwrecks by sport divers but has denied all applications for commercial salvage and park rangers have arrested divers caught vandalizing sites."

Conclusion

In conclusion, all states currently hold title to the historic shipwrecks in their waters and many have designed laws based on their size, the interest of their populations, and the kinds of historic shipwrecks in their waters. What many states have not done is to take responsibility for implementing their laws. When implementing shipwreck laws, states must balance commercialism, recreation, education, and research; the past may serve many purposes in the present.

Sport divers and salvors recognize the value of artifacts in an immediate way, the archeologist values artifacts for their long-term stories about peoples and cultures.

Passage of legislation that gives the states clear title to historic shipwrecks in state waters and consequently avoids federal litigation will provide an anchor for many state programs. These programs can then move from their becalmed state and cruise to new lands of the past.

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Senator WIRTH. Thank you very much, Ms. Giesecke.

Mr. Taylor.

STATEMENT OF ERIC J. TAYLOR, ASSISTANT ATTORNEY GENERAL, STATE OF FLORIDA

Mr. TAYLOR. Good afternoon, Senators. I am Eric Taylor, Assistant Attorney General for the State of Florida. I speak on behalf of the State, as well as I think a lot of the other States' concerns. I bring to you my personal background of five years defending the State of Florida in the fight to protect these historic shipwrecks.

The main concern of the State of Florida has been the loss of management. Prior to about 1979, there was no question in the State's mind that we had a right to manage our lands. Like Mr. Mott said to you earlier in his own responses, that the Federal Government, in fact, manages shipwrecks within its parks, the States also thought they had that ability, in fact, were passing laws in managing those shipwrecks. But with the interjection of the Federal courts in Florida and other States, that ability has been lost to the States. They have lost the right to manage their submerged lands, as well as protect historic shipwrecks.

What is involved here is more than just shipwrecks because as any State must manage its lands, it has many competing interests to those lands, including commercial fishermen, recreational interests, bathers, environmentalists, historic preservationists, academics. We are the people who can best balance these uses.

For example, the type of situation that occurs where you need this balancing act is in 1983 a salvor appears before the public beach at Naples, Florida and wants to dredge within 100 feet of the beach. Within 50 yards north of that beach, the endangered turtles are nesting at that very time. We had to go to court to stop him from doing his dredging operation.

But this bill, if passed, would end the Federal courts' interjection into the system. That has been the problem. When the Federal courts come in, the States lose their ability to manage any of these lands or to answer any of the competing interests.

Some of the questions that have been raised about whether or not States will take sport divers interests into effect, and I wanted to let you know today that I have brought information for each of you on the subcommittee and the staff that within the last two weeks Florida, after working two years to set up this preserve, has opened an underwater archaeological preserve north of Fort Pierce, Florida. This is aimed directly at sport divers and those snorkelers who wish to have a recreational dive on the sites.

It is our position that is we have the ownership of these artifacts, we can manage them by dividing certain ships for academic study, certain ones for commercial and certain ones for the sport divers. I don't believe that the Federal courts have that ability to manage it. The States are the only people who can, and this bill would, in fact, give that to the States.

Thank you.

[The prepared statement of Mr. Taylor follows:]

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WRITTEN STATEMENT OF

ERIC J. TAYLOR
ASSISTANT ATTORNEY GENERAL

STATE OF FLORIDA

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS

OF THE

SENATE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

ON S. 858

ABANDONED SHIPWRECK ACT OF 1987

SEPTEMBER 29, 1987

INTRODUCTION

I am Eric J. Taylor, Assistant Attorney General for the State of Florida. Thank you for the opportunity to appear before this subcommittee in support of S. 858., the Abandoned shipwreck Act of 1987. I come to speak in support of this act on behalf of the Florida Attorney General, the Florida Secretary of State and my clients in the series of litigation seeking to protect Florida's submerged lands, natural resources, marine environment, and historic resources, the Florida Board of Trustees of the Internal Improvement Trust Fund, Florida Department of Natural Resources, Florida Department of Environmental Regulation and the Division of Historical Resources of the Florida Department of State.

The Florida Legislature has charged these client agencies with the protection and management of state lands, the environment and historic resources. In particular, the Florida Legislature, in Section 267.061, Florida statutes, has claimed ownership of all historic artifacts, including historic shipwrecks, abandoned on Florida's submerged lands. The Division of Historical Resources is vested with the title to all historic artifacts found on state land and charged with their management.

As an Assistant Attorney General, I have, since April of 1982, represented the State of Florida and its agencies in both state and federal courts seeking to protect not only the historic shipwrecks buried in the submerged lands within the territorial jurisdiction of the State of Florida , but also the lands, human and natural resources that become threatened when a treasure salvor enters upon the State's lands and excavates for treasure. I, on behalf of the Attorney General, have initiated prosecutions to enforce provisions of Chapters 253, 403 and 267 of the Florida Statutes.

For the past eight years, the ability of my client agencies to carry out their management and protection responsibilities has been greatly hindered by the application of federal admiralty law to the excavation of historic shipwrecks sites on state lands. More than any other state, Florida has been the focus of legal, archaeological, and commercial salvage activities surrounding historic shipwreck sites. These are not fleeting occurrences, they are a continuing activity. Within the last month, another salvor has attempted to take possession of a historic shipwreck, believed to have sunk in the late 1660's, through the use of federal admiralty law. The State is presently contesting that action in state court and federal court. Because of these activities, Florida is in a unique position to appreciate the critical need for the enactment of a law like S. 858.

BACKGROUND

Florida has been in the forefront of historic shipwreck activity since the late 1940's when the first leases to salvage historic shipwreck material were granted by the Florida Governor and Cabinet. During the 1950's and early 1960's, large quantities of treasure were recovered from Florida waters -- the most famous being from the Spanish Plate Fleet of 1733 in the Florida Keys. In the 1960's, in response to the concerns of archaeologists, anthropologists, and historian, the Division of Historical Resources was created and assigned the responsibility of managing and preserving Florida's valuable historic shipwrecks.

The Division worked with private salvors to collect information and artifacts through a program of exploration and salvage contracts for historic shipwreck sties on state-owned lands. These contracts allowed commercial salvage of the shipwreck sites, but the Division acquired important archaeological information and a representative sample of the artifacts that were recovered under contract. This approach attempted to reconcile the conflicting goals of salvors and archaeologists.

Florida's program of managing historic shipwrecks was seriously undermined in 1979 when certain salvors, deciding that they did not want to cooperate with the Division nor follow state law, filed a series of admiralty arrests in federal court attempting to oust those licensed by the Division to work particular sites and gain exclusive access to those sites. These actions, and the resulting federal court decisions, placed into legal doubt the clear authority of all the states to manage their submerged lands not only for historic shipwreck resources, but also for the wide range of other public uses of coastal areas. As a result, Florida is now a case study in the legal and management problems surrounding the dual jurisdictions of the federal courts and state agencies over historic shipwrecks on state lands.

STATE MANAGEMENT

Florida, like most states, uses its police powers to manage the lands within its jurisdiction. This management includes regulating and balancing various demands the public places on the lands. The states have to balance the interests of commerce, recreation, and conservation in these lands.

Florida, like all the other states, acquired the title to its submerged lands, and therefore, the right to manage and regulate, when it came into the Union in 1845. Ever since it entered the Union, Florida's Constitution has claim the submerged waters off its coast as part of its territorial jurisdiction. When the United States Supreme Court raised the question of the states' control over the submerged lands, Congress enacted the Submerged Lands Act of 1953, 43 U.S.C. §§1301-1315, to clarify once and for all that the states have title to and ownership of the submerged lands and the right and power to manage, administer, develop and use the submerged lands.

In light of these powers, the Florida Legislature created a management plan by which use of the submerged lands is controlled. By Section 253.77, Florida Statutes, no person nor any State agency may use the submerged lands in Florida without permission of the Florida Board of Trustees of the Internal Improvement Fund. Prior to the Board granting such permission, the Board requires that the applicant receive permits from the Department of Environmental Regulation to insure no environmental degradation will occur and a permit from the particular agency which has control over the activity the applicant seeks to be involved in. In the case of historic shipwrecks, the permitting agency is the Division of Historical Resources.

All these processes require public input. By receiving public input, the agencies involved can listen to the competing interests for the land and determine which course of action is in the public's interest. Only when the Board is fully satisfied that the proposed use the applicant seeks is in the public's interest will the Board issue its use permit. Even then, the rejected applicant, or the rejected other competing interests, can appeal the board's decision to the judicial system of Florida.

Such a process is an orderly method to balance the interests of the public. Such a process is not unique to Florida. All the states have some procedure by which to regulate the use of the state's submerged lands. Such procedures give the states the clear management power envisioned by Congress in the Submerged Lands Act of 1953.

STATE OWNERSHIP AND MANAGEMENT PROBLEMS UNDER ADMIRALTY JURISDICTION

With the intervention of the federal courts into the issue of who has the right to own and manage the historic shipwrecks found on the states' lands this management procedure is thrown into turmoil.

Florida's greatest problem in attempting to manage historic shipwrecks is resolving the issue of who has title to and ownership of these archeological resources. Since the enactment in 1967 of Chapter 267, Florida Statutes, it has been the State's position that all historic shipwrecks abandoned on state-owned sovereignty submerged lands are the property of the people of Florida, with title vested in the Division of Historical Resources. However, as noted above, recent decisions of the federal courts have held that under federal admiralty law, historic shipwrecks are not owned by anyone and that any commercial salvor who raises shipwreck material may have valid claim to it. The fact that the State may make a claim for the vessel does not prevent the federal courts from ajudicating the interests of private salvors to that shipwreck. Aside from undermining state ownership, admiralty law encourages the expeditious salvage of artifacts for commercial reasons without regard for the historical significance of these resources.

Florida's problems are further complicated by the federal courts' failure under admiralty law to consider other factors central to the responsible management of public properties. For instance, once an admiralty arrest is filed, the shipwreck site becomes, in effect, a small outholding of federal authority within state submerged lands. Thus, the state's ability to manage its public lands, as described before, for multiple use activities such as environmental protection and public use are hampered because federal admiralty law is claimed to preempt the state management laws. In such situations, the state is not able to manage its coastal resources based upon the consideration of the many competing demands such as recreation, commercial and sport fishing, residential use, protection of wildlife habitats, and other forms of public enjoyment. For example, a salvage operation may cause turbidity in the water that damages a living coral reef, or a shipwreck might lie under a producing oyster bed, or be so close to public swimming areas that salvage would constitute a public hazard or nuisance, and yet the state's ability to protect these resources is hampered by the application of admiralty law. There is absolutely no guarantee the federal court will hear the concerns of the competing interests or protect those interests the State feels are superior to the admiralty claim.

While Florida should have the final authority to permit exploration or prevent disturbance of a historic shipwreck, it has been prevented from exercising the management procedures, created by the Legislature, once admiralty law is applied. It is Florida, not the federal courts, that should decide whether or not a particular shipwreck site should even be excavated. Florida should also exercise the power to decide, if a site is to be excavated, who is best fit to to do a particular job, the methods to be employed that would minimize environmental degradation, and whether the site is to be excavated by a commercial salvor or a public institution, or even if a site has sufficient historic potential to warrant preservation rather than salvage. Again, the application of admiralty law prevents Florida from making these determinations. The federal courts do not have the resources and personnel to hear and debate the various issues brought by the competing interests nor to make a decision that would be consitent with a state's management plan.

Florida has a long history of admiralty litigation; some suits have been settled to the State's satisfaction and others have not. Since 1983, around twenty additional arrests have been filed on historic shipwreck sites in state waters. These arrests further illustrate the problems inherent in dual jurisdiction. In some cases, the state does not even have knowledge of the arrests, since the federal courts do not necessarily notify the state of the arrests or that salvage is underway. Additionally, many conflicts between state authority and federal court authority have been experienced in Florida: admiralty arrests have been filed by new salvors on wreck sites already under state contracts to other salvors; arrests have been filed on wreck sites for which state contracts have been requested but not executed; arrests have been filed on wrecks in one federal court that are already under arrest in another federal court; arrests have been filed in state waters by salvors having no intent to apply for a state contract; and the State has brought enforcement action in state court at the same time an admiralty case is pending in the federal court over the same shipwreck with the same salvor. Dual jurisdiction has resulted not only in confusion and loss of archeological information on which future management decisions should be based, but also in the considerable expenditure of state resources on attempts to resolve these needless conflicts.

If Congress does not resolve this conflict between the states and the federal courts, the states will continue to be mired in a legal and management quagmire, unable to use their lands as they see fit; unable to make any comprehensive management plans; or ensure the protection of its natural and historical resources.

STATE LAWS PROTECTING HISTORIC SHIPWRECKS ARE NOT INCONSISTENT WITH FEDERAL LAWS

The exercise of admiralty law over historic shipwrecks brings into doubt the states' laws protecting historic resources in the water. However, those who claim that the states' laws are preempted by federal laws are mistaken.

MARITIME PREEMPTION

There is no maritime statutory scheme or evolved history of case law in admiralty law that regulates "historic" maritime objects. The intention of admiralty salvage and its system of reward was to award those persons who risked their lives and property in an attempt to save lives or a sinking ship or to return a sinking ship or its cargo to the stream of commerce. Marine salvage is generally defined as the:

> compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss as in cases of shipwreck, derelict or recapture.

However, there is no evidence of admiralty treatises or case law that foresaw that marine archaeology or historic artifacts found in land underwater would be considered part of marine salvage.

HISTORIC PRESERVATION

There is no question that governmental bodies have the authority to exercise its police powers to preserve and regulate the cultural resources for the public's welfare. This includes historic preservation of our Nation's heritage.

In the Antiquities Act of 1906, 16 U.S.C. §431 et seq., Congress authorized the President to declare that;

> historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States.

In addition to the Antiquities Act of 1906, Congress has enacted other laws designed to preserve and protect historic sites and objects for the benefit of our citizens. The Historic Sites Act, 16 U.S.C. §461-467, passed in 1935, states that the protection of historic sites and property is the national interest. As part of this national policy, Congress created the National Trust for Historic Preservation.

In 1966, with amendment in 1980, Congress added the National Historic Preservation Act, 16 U.S.C. §470-470w-6. Congress again stated it was in the national interest to protect the nation's historic heritage and to protect that heritage from loss or injury. As part of the National Historic Preservation Act, Congress created the National Register of Historic Places, 16 U.S.C. §470a, defined as a "register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture."

Following the example of Congress, the states too have enacted laws to protect their local cultural and historical heritage. Many of these laws specifically include the protection of historic artifacts found under the water.

A review of the federal statutes indicates federal approval of state control of historic artifacts on the states' lands, upland or underwater and makes no mention that maritime law overrides the states' actions. For instance, the Historic Sites Acts, 16 U.S.C. §461-468d, directs the Secretary of the Interior to

> [c]ontact and make cooperative agreements with states . . . to protect, preserve, maintain, or operate any historic or archeological building site, object or property used in connection therewith for public use regardless as to whether the title thereto is in the United States.

In addition, the National Historic Preservation Act, 16 U.S.C. §470-470w-6, specifically recognized the right and obligation of States to preserve and maintain prehistoric and historic resources located on state owned lands. Thus, one purpose of the National Historic Preservation Act is to "assist State and local governments . . . to expand and accelerate their historic preservation programs and activities." Congress declared that:

> It shall be the policy of the Federal Government in cooperation with other nations and in partnership with the States . . . to --
>
> * * *
>
> (4) contribute to the preservation of nonfederally owned prehistoric and historic resources . . .
>
> * * *
>
> (6) assist State and local governments . . . to expand and accelerate their historic preservation programs and activities.

The federal regulations promulgated under the National Historic Preservation Act reinforce the Act's policy of federal and State cooperation to preserve historic and cultural properties. The regulations create and define the "National Register of Historic Places." The National Register "is a register of districts, sites, buildings, structures, and objects of national, State or local significance in American history . . "Eligible property" means property meeting the National Register Criteria. Historically significant shipwreck sites and their artifacts clearly meet National Register criteria and are thus "eligible property."

In an act aimed directly at the maritime environment, Congress passed the Maritime Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. §§1431-1439, (Marine Sanctuaries Act). In particular, Congress found that the marine environment posses

> conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance.

The Secretary of Commerce may designate any area of the "marine environment" a marine sanctuary, if he finds that the area fulfills the purpose of the Act and is of special national significance due to its human, resource value. In considering the area, the Secretary is to examine the "areas' historical, cultural, archeological or paleontological significance," and the existing state "regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter." Only if the state authorities are inadequate to preserve and protect the human resources in the marine environment is the federal government to act. Thus, Congress, through this Act, has envisioned that the states have always had the power and authority to protect and preserve historic property and objects in their ocean territory.[1]

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[1] Pursuant to this Act, the Secretary of Commerce created the "Monitor Marine Sanctuary." The sanctuary was created to protect the former Union ironclad U.S.S. Monitor which sank off the coast of North Carolina in 1862. The sanctuary is approximately 16 miles offshore of North Carolina, one mile in diameter and includes the ocean water and seabed. The rules covering the sanctuary, 15 C.F.R. §924.1-8 prevent "any type of subsurface salvage or recovery operation."

In addition, in creating the Key Largo Coral Reef Sanctuary in Florida, the language expressly provides that:

> [n]o person shall willfully destroy, molest,

(Cont'd on next page)

Finally, Congress clearly envisioned that the States would enact laws protecting historic site and artifacts when they enacted the Coastal Zone Management Act. 16 U.S.C. §1451-1464. Again, Congress noted that the coastal zone contained

> Important ecological, cultural, historic, and esthetic values . . . which are essential to the well being of all citizens . . .

that are "being irretrievably damaged or lost." Therefore, Congress encouraged the states to

> exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and esthetic values . . . which programs should at least provide for --
> (E). . . sensitive preservation and restoration of historic, cultural and esthetic coastal features.

The "coastal zone" includes all submerged lands within the territorial boundaries of the states. The Act requires the coastal states, if they wish to receive grants, to develop a management program. Once a plan is made which includes a planning process

> for the protection of, and access to, public beaches, and other public coastal areas of environmental, recreational, historical,

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deface, remove, displace, or tamper with an archeological or historic resource or cargo pertaining to submerged wrecks within the boundaries of the sanctuary. 15 C.F.R. §929.4(d).

esthetic, ecological or cultural value,

and approved by the Secretary, the states' plans are accorded great weight.

It is thus clear that Congress wants the states to protect their historic resources. There is no reason that admiralty law should apply. The State of Florida, along with archaeologists, historians and preservationists, believes that significant historic underwater sites should receive the same protection that important upland sites now receive. Indeed, all significant cultural resources on public property warrant management and protection in the public interest regardless of whether they are on upland or submerged land sites. Admiralty jurisdiction over shipwreck sites runs against these principles and is analogous to allowing private contractors to arrest, dig up, and sell material from state-owned archeological and historical sites on land. To exclude historic shipwrecks from our desire to preserve the past and turn them over to commercial salvors would be a desertion of our heritage. We make it a crime to allow pothunters to dig on indian site or souvenir hunters to dig in Gettysburg National Battlefield Park, why should we condone commercial exploitation of historic shipwrecks?

S. 858 AS A REASONABLE SOLUTION

The conflict that now exists can best be settled by granting title to historic shipwrecks to the states, as has been done with the other natural resources found on state submerged lands. This would hand back to the states the ability to resume full and complete management of their lands and resources and to properly balance the competing interests of its citizens. Furthermore, the states are the best bodies to manage all these resources. Shipwrecks have individual qualities, qualities that can best be protected and excavated by the states which would know its lands and environment best.

Florida requests the clear authority to continue that process and views S. 858 as the proper vehicle to achieve that goal. I support S. 858 because it:

1. Assigns the states the responsibility for managing their resources in their waters, including abandoned shipwrecks;

2. Transfers title to certain abandoned shipwrecks in or on state submerged lands to the proper owners, the state;

3. Exempts abandoned shipwrecks from federal admiralty laws, thus clarifying the proper role of the states;

4. Affords meaningful recreational and educational opportunities to sports divers and provides for reasonable recovery of the abandoned shipwrecks; and

5. Fairly "grandfathers" from its provisions any suit ##?iled before the date of enactment.

CONCLUSION

The present conflict between the federal courts and state law must end. Without the enactment of S. 858, Florida will be forced to continue to expend considerable time and money to resolve legal disputes brought on by conflicting federal admiralty law. Limited funds which could be used to locate, preserve, or recover archeological and historical resources are being wasted on legal disputes that only Congress can settle.

You have before you the opportunity to resolve this conflict. Each abandoned shipwreck site represents much more than just a cache of cargo. Florida's objective is to preserve its heritage and marine resources for current citizens and future generations. To do these things we need your support for S. 858.

Senator WIRTH. Mr. Taylor, thank you very much.
Mr. Bass.

STATEMENT OF DR. GEORGE F. BASS, PROFESSOR OF NAUTICAL ARCHAEOLOGY, TEXAS A&M UNIVERSITY, ON BEHALF OF THE SOCIETY FOR HISTORICAL ARCHAEOLOGY

Dr. BASS. My name is George Bass. I am a professor at Texas A&M University. I am here to present testimony on behalf of the Society for Historical Archaeology, 10 other major national and State archaeological and historic preservation groups, and they will appear in the written testimony.

My own work is in the Mediterranean, not in the Americas. And therefore, I am here only on principle. I have just come back where my group did 1,500 dives on a Bronze Age shipwreck 150 to 170 feet deep. I have been doing this for 27 years, so I think I know something about diving.

On December 1, Nova will show a film we made for half a million dollars of privately raised funds, and the December National Geographic magazine will have a 42 page cover article by me on our work. This is our ninth National Geographic article. So, I know something about benefiting the public.

We found on the wreck we are excavating now the only gold scarab ever found of the famous Queen Nefertiti of Egypt. We found the oldest book ever found, and a lot of things which, if on the market, would be worth millions and millions of dollars. So, I think I know something about finding treasure.

I am here because somebody has to always stand up and tell the facts about treasure hunting. I was once asked if I would debate a famous treasure hunter on national TV, a Nightline type of program, and I accepted. My students wouldn't let me. They said, Dr. Bass, don't do that. They talk Texan-like, you know. And they said, because you're a scholar, you are bound by the truth. They'll say anything they want, and you will be wiped out. And so, I backed out of it. And the next day the treasure hunter I was supposed to have faced had in the paper that his archaeologist had published more scholarly articles than all the State archaeologists in the country combined. Well, how could I go up against that sort of thing? Of course, that's nonsense.

Now, I don't have any written testimony because I thought I would just listen to what the people before me said. Mr. Horan—I wish he was here—says that everybody wins. Okay, private enterprise has been in the works for a long time, and his group—treasure salvors have been in the works a long time. Why is it that we know more about how Greek and Roman ships were built than we know about how Spanish galleons were built?

There are only three known from the period of exploration just after Columbus in the new world. And my group has worked on all three. All three were damaged by treasure salvors before we got there.

He says that it will take away the incentive for finding wrecks if you don't have free enterprise. He knows that my group has found almost 100 shipwrecks off the Turkish coast. And we don't sell one item from any of them.

When he says bring those items in—that was just his comment—of course, that has nothing to do with archaeology whatsoever. I mean, archaeology isn't bringing in items. That has got nothing to do with it.

Mr. Maddox says that he hasn't seen anyone in favor—divers in favor of the bill. Well, we had representatives last time in the House from the Professional Association of Diving Instructors, which is a large group.

He says that some underwater archaeologists are against sport divers diving on any wreck. I want somebody to name these archaeologists that don't want sport divers diving on wrecks. I have never heard anybody say that, and I'm an archaeologist.

Mr. Gleason's representative—well, Skin Diver Magazine—yesterday I read an editorial against this bill in Skin Diver Magazine on the plane. I am outraged. It has got at least five faults in it, which I can point out right now. This is Skin Diver Magazine that won't publish Mr. Bennett's letters.

What else? The lawyer from New Jersey said only 5 to 6 percent of shipwrecks are historic. You know, what does this got to do with anything? There may be only 5 to 6 percent of land sites that are worth excavating, but they should be protected. You can't tear apart the Alamo and sell the pieces for souvenirs. And yet, if you go and find a ferry boat of the same battle right there in the river in the middle of San Antonio, you can rip it up and sell the nails as souvenirs. An archaeological site, whether it is on top of a mountain, in a jungle, under water, or in a desert, is an archaeological site.

Thank you.

[The prepared statement of Dr. Bass follows:]

I am here today to present testimony on behalf of the Society for Historical Archaeology. But in supporting the Abandoned Shipwreck Act, I also represent the views of the following organizations:

Archaeological Institute of America
Society of Professional Archaeologists
Council of American Maritime Museums
Advisory Council on Underwater Archaeology
Texas Antiquities Committee
Texas Historical Commission,

as well as the

Society for American Archaeology

and the

National Conference of State Historic Preservation Officers,

both of which will be submitting separate written statements to the committee.

S. 858

TESTIMONY BY GEORGE F. BASS

I testify in support of S. 858, The Abandoned Shipwreck Act, on behalf of the Society for Historical Archaeology. In supporting the Abandoned Shipwreck Act, I also represent the views of the following organizations: Archaeological Institute of America, Society of Professional Archaeologists, Council of American Maritime Museums, Advisory Council on Underwater Archaeology, Texas Antiquities Committee, Texas Historical Commission, and the Institute of Nautical Archaeology - as well as the Society for American Archaeology and the National Conference of State Historic Preservation Officers, both of which will be submitting separate written statements to the committee.

I have some expertise in this area. I did my undergraduate and M.A. work in Near Eastern archaeology at the Johns Hopkins University, and hold a doctorate in Classical archaeology from the University of Pennsylvania. I am now Distinguished Professor of Anthropology at Texas A&M University, and am founder and Archaeological Director of the Institute of Nautical Archaeology, an institute which during the past decade has conducted shipwreck excavations on four continents.

More specifically, this past summer my staff completed

1,500 dives on a Bronze Age shipwreck lying 145 to 170 feet deep off the Turkish coast; having worked like this for the past 27 years, I know something about diving.

On December 1, 1987, NOVA will telecast nationally a film of my work made with half a million privately raised dollars, and the December National Geographic Magazine will feature a 42-page cover article on my work. Since this is the second national telecast about our work, and our ninth National Geographic article, I know something about benefitting the public.

Just one of the sites we currently are excavating has yielded the first gold scarab ever found of the famous Egyptian queen Nefertiti, the earliest book ever found, and other priceless antiquities. Thus, although we sell nothing, I know something about finding real treasure.

Last year I became the youngest recipient ever of the Archaeological Institute of America's Gold Medal for Distinguished Archaeological Achievement, so I know something about archaeology.

My lastest book, co-authored with six current or recent students, has just gone to press; a similar book published 15 years ago similarly was co-authored with students, and it became a Book-of-the-Month Club first alternate selection, eventually published in six languages. Thus I know something about education.

Because my own research is in the Mediterranean, I have no personal stake in this proposed legislation. I testify solely on principle, because someone expert in the various areas I have mentioned must counter the falsehoods spread by those opposed to the legislation. My question is always the same: If those opposed to the Abandoned Shipwreck Act have a reasonable case, why must they resort continually to falsehoods?

I once was asked to debate a prominent treasure hunter on a network television program. I accepted. But my students said: "Don't do it. You are a scholar and are bound by the truth, but you know that your opponent will say anything at all that suits his case." How right they were. I backed out of the program, and next day saw the same treasure hunter quoted in the press as saying that his archaeologists had published more scholarly papers than all the state archaeologists combined! And the public believes this nonsense.

I recently read an editorial in Skin Diver which opposes the bill. The article contains at least five falsehoods or mistakes; as far as I know, Skin Diver has never published what the actual bill says! Does the magazine fear the truth? I have published over 100 articles internationally during my career, mostly on underwater archaeology, and I have had only one manuscript rejected - by Skin Diver! That says something.

I have little to add to the testimony I gave to the House Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries on October 29, 1985 (Serial no. 99-19), which I append, but I do offer a few ideas:

To those who say that free enterprise is the better approach to shipwreck archaeology, I ask: Where is the equivalent to the Vasa in Sweden, the Mary Rose in England, the Kyrenia ship in Cyprus, the Batavia in Australia, the Bremen cog in Germany, the Viking ships in Denmark, the medieval ship we are now restoring in Turkey, or any other full-scale excavation followed by reconstruction, done under the free-enterprise system? Treasure hunters are interested only in bringing in objects.

To those who continue to say that free enterprise offers the only incentive to finding shipwrecks and bringing in objects from them, I remind them of the nearly 100 wrecks my staff has located, and which they are aware of.

To those who say that archaeologists don't want sport divers diving on any wrecks, I ask for names. I have been a nautical archaeologist for more than a quarter of a century, and I've never heard a colleague say this. In fact, one of the reasons we want shipwrecks protected is so future generations of sport divers will have them to dive on!

Here, then, is the testimony I gave in 1985, slightly shortened and brought up to date:

I am perhaps the only person to have directed both land and underwater archaeological excavations, including numerous shipwreck excavations and surveys in Turkey, Italy and the United States; these include the three oldest shipwrecks ever excavated, dating from between 3,600 and 3,200 years ago. I have shared the results of my work with the public by publishing five books and approximately 100 articles, both popular and scholarly, on underwater archaeology. Our films have been seen on television around the world. I have given hundreds of popular lectures around the country, as well as abroad.

Being the first person to have excavated an ancient shipwreck in its entirety on the seabed, in 1960, I with my team set the standards for underwater archaeology and developed many of its techniques; these include techniques later used by the military and by other marine scientists, such as communications by underwater telephone booth, a method of mapping the sea bed by stereophotogrammetry, a method of mapping the sea bed from a submarine, a submersible decompression chamber requiring no support vessel, and improved techniques of conserving and replicating ancient iron objects. My team was the first to discover an ancient shipwreck by means of a sonar survey. And I ordered the construction of the first research submarine launched and sold by an American manufacturer (1964). Additionally, I have been in charge of more than ten thousand deep, decompression dives.

I initiated the first scientific excavations of ships of the American Revolution (an American ship in Maine, and a British ship in Virginia). One of my students, Michael Katzev, was the first to actually raise and restore an ancient hull from the Mediterranean, and another, Donald Keith, at present is directing the first scholarly excavation of an early shipwreck in the Caribbean. We have trained the leading underwater archaeologists of Australia, Turkey, and Israel.

For such efforts, the United States Jaycees in 1967 chose me one of the Ten Outstanding Young Men in the Nation, and in 1979 I was awarded the John Oliver La Gorce/National Geographic Society Gold Medal for advancing the science of nautical archaeology.

Society has seen fit to pass laws to protect the physical remains of its past. Gone are the days when collectors obtained permits from a sultan to gather antiquities from the Ottoman empire, and colonial rulers took as spoils what they pleased. No longer can farmers knock down ancient marble columns to burn for lime in the name of free enterprise. Society condemns plundering of Maya tombs and American Indian mounds for private gain.

Is it not fitting that in this century King Tut's treasure was excavated by archaeologists, and kept together as a collection, not only for continued study, but for the enjoyment of the millions of people who have seen it in the United States and elsewhere?

An archaeological site in a jungle, on a mountain top, in a desert, or under water, is an archaeological site. Underwater sites are protected as such in Europe, Africa, Asia and Australia. Why not in the United States?

Archaeology has little to do with the unearthing or ownership of artifacts. It is a search for knowledge and truth, and an attempt to conserve our past for the benefit of all. My institute has located more than 75 ancient wrecks in the Mediterranean alone, and has raised treasures of gold and silver and glass worth millions of dollars. The excavation of those treasures is the simplest, least expensive part of our work, however, even if we are working

145 to 170 feet deep. We spend two years on the conservation, restoration and interpretation of artifacts, including entire wooden hulls, for every month we dive, whether in the Mediterranean or Caribbean. A salvage group with one or two archaeologists cannot conduct serious archaeology any more than a large hospital with one or two physicians on its staff can practice serious medicine. And an "amateur archaeologist" has no more business directing an excavation than an "amateur dentist" would have practicing dentistry.

Archaeologists study as long as do physicians, but are less well paid. They have lost their lives, both on land and under water. Yet this gives them no claim to their finds, which go to museums usually more attractive and informative than the museums of treasure hunters, which lack proper conservation facilities for historic artifacts of little monetary value.

The public visits Mount Vernon and the Alamo, but we would not allow an entrepreneur to dismantle either for private gain. Similarly, historic shipwrecks should be preserved for the pleasure of future generations of visiting divers. Why should a salvor be allowed to dismantle one of John Paul Jones' or La Salle's ships to sell or own for his own benefit? An historic monument, regardless of where it is found, is an historic monument. It should be recognized as such by law.

Opponents of this bill base many of their arguments on erroneous assumptions or, in some cases, myths of their own manufacture. I would like to correct some statements I have read over the years:

1. Treasure-hunters claim that wrecks are endangered by hurricanes and other storms unless excavated ("salvaged") soon.

This is not true, as a leading wave expert from the Oceanography Department at Texas A&M University has demonstrated. I have found that wrecks, even shallow ones in the Caribbean, have stabilized at some point in the past and have suffered little additional damage from subsequent centuries of storms.

2. Treasure-hunters claim that the only way to pay for the enormous expense of underwater salvage is through the sale of artifacts.

This totally ignores the first-rate excavations I and my collegues have conducted on four continents during the past 27 years, without the sale of the tiniest scrap of pottery or wood; these projects have included the expensive conservation and restoration of wooden hulls, which treasure-hunters have never paid for. Archaeological colleagues in France, Australia and other countries are similarly doing first-rate work without selling artifacts; slivers of wood from the Mary Rose in England admittedly were sold as souvenirs to help pay for its salvage and conservation, a unique exception to the rule.

3. Treasure-hunters have claimed that there is no need to excavate carefully the wooden hulls of New World shipwrecks because, unlike those in the Mediterranean, they are not well enough preserved to warrant care, being shallow and found in areas of high waves.

Again, untrue. Treasure-hunters claim this less often now that I and my colleagues have begun working in the Caribbean, where I have seen hulls only fifteen feet deep in high energy zones as well preserved as any I have worked on in the Mediterranean 100 or more feet deep.

Unfortunately, I still see films of well-preserved timbers being scattered brutally in the Caribbean by prop-wash deflectors used routinely by treasure-hunters to search for salable artifacts.

4. Treasure-hunters have claimed that there is no need to excavate carefully hulls of New World shipwrecks because detailed plans of early Spanish ships exist in Spanish archives.

Another myth. We know more about how Greek and Roman ships were built than we do about how the ships of exploration, like those used by Columbus, were built because hulls have been excavated scientifically in the Mediterranean instead of being torn up by treasure-hunters.

5. Treasure-hunters are said to deserve all the profit they can make because they risk their lives and have lost team members.

I am dismayed that nearly every article I have read on the controversy between treasure-hunting and archaeology has emphasized the loss of life of treasure-hunters, but not one has mentioned the death of the most promising nautical archaeologist in the world from a diving accident six years ago; he died only weeks before receiving a doctorate from Cambridge University and before the publication of his second book. Others of us have seen friends and colleagues crippled by bends and embolisms, but we believe our daily risks are totally irrelevant to any rights to sell what we excavate.

6. Treasure-hunters state that they should salvage old ships because archaeologists haven't gone out and found them and excavated them and have no record of successful work in the New World.

Treasure-hunters are correct that American archaeologists do not have a good record of survey, excavation and publication in their own hemisphere. However, there were no scientific archaeologists in Greece and Turkey 200 years ago, and I believe we are fortunate that not all Greek tombs were robbed or that not all Greek temples were burned for lime, as happened to some. We must think of the future; one day there will be sufficient archaeological expertise in this hemisphere to do the job - if any worthwhile wrecks remain. Do we do away with medicine because cures to all diseases have not been found?

7. Treasure-hunters have claimed in the press that they developed 90% of the equipment used for underwater excavation.

Treasure-hunters did not develop diving equipment, underwater cameras, air-lifts, underwater dredges, lifting balloons, magnetometers, sonar, metal detectors, underwater mapping devices, conservation equipment, etc., etc. What else do they use? They may have invented the prop-wash deflector. Is that 90% - or even 20%?

8. The archaeologist employed by one treasure-hunting firm suggests that archaeologists by law be given six months to study artifacts before they are sold, to insure that no historical or scientific knowledge is lost by treasure-hunters.

This shows the appalling ignorance of a well-known archaeologist who works for treasure-hunters. As stated above, it takes many, many years to conserve artifacts from shipwrecks. We have one team of conservators working year round in Turkey on glass artifacts excavated between 1977 and 1979, and another team working year round on the restoration of the hull from the same wreck; a third team spends half of each year on the conservation of iron from the ship. This work, and the concurrent recording by drawings and photography, will continue for years to come. What we would have learned about this ship would be pitifully small had we sold the artifacts after six months.

The sixteenth-century artifacts our institute recovered during one and a half summers of excavation in the Caribbean have been undergoing mechanical, chemical and electrolytic treatment for several years; the job, in spite of a full-time staff of half a dozen technicians, will require several more years.

9. Treasure-hunters say there is no harm in selling duplicate artifacts.

Using newly devised techniques, we recently began the long-term restudy of seemingly identical artifacts we excavated more than twenty years ago, and have learned enough to write new chapters and articles on them. In fact, this restudy is causing us to revise some of our conclusions about the nature of Byzantine maritime commerce. We were able to make this new study only because the artifacts are still stored together in a museum instead of having been scattered through sales.

10. Treasure-hunters say that archaeologists can speak easily about leaving their finds to the state or nation from whose waters they were excavated because archaeologists don't deal with "real treasure."

Archaeologists, too, find gold and silver, and priceless classical bronze statues. One glass bottle from the ship we excavated between 1977 and 1979 was appraised as being worth about $65,000 if it were for sale; we have 80 intact glass vessels from that single wreck, with the fragments of perhaps 10,000 more, which our conservators are piecing together. More recently we have excavated gold and silver jewelry from a wreck that sank at the time of King Tut, 3,400 years ago - who can guess the price of the gold chalice we found there. Surely this is treasure.

11. The press has called treasure-hunters good amateur underwater archaeologists, more competent than many professional archaeologists with university degrees.

Who would go to an amateur brain surgeon? There are well meaning people who claim cures for cancer and other diseases, sometimes reported in the press, but society does not allow them to practice without proper credentials. Amateur archaeologists have an important role to play, but mainly in locating wrecks and in assisting professionals to excavate them. I have never worked without amateur divers on my staff; the president of our institute, in fact, first joined my team as an amateur diver with no archaeological training.

12. There are thousands of shipwrecks, enough to go around. Why should archaeologists have them all?

There are thousands of land sites. Why not give them to pot-hunters? Why not let some "free-enterprise" treasure-hunters have some Egyptian pyramids and half the classical temples on earth - there are plenty to go around.

In fact, wrecks are disappearing at an alarming rate. I have conducted underwater surveys off the Italian coast, and found nothing; shipwreck site after shipwreck site had been stripped bare by souvenir hunters and professional looters. Some of these sites once had held remains of Phoenician ships, so the world has been thwarted in attempts to learn how the most famous of ancient mariners constructed their vessels - and future generations of Italian amateur divers have lost the opportunity of even seeing ancient shipwrecks. American amateur divers led the fight to protect coral reefs and to protect fish from scuba-equipped spearfishers, and I am delighted to learn that they now are fighting to protect wrecks for the benefit of the diving community and those who follow. I would suggest that diving organizations might take it upon themselves to help establish and preserve underwater archaeological parks.

Anyway, archaeologists don't want to "have" wrecks, which we believe belong to the public as do historic monuments on land. Our job is to understand them and to disseminate knowledge about them through appropriate channels, both to other scholars and to the public.

13. Treasure-hunters deserve what they get because they are little guys who trying to make good under the free-enterprise system, not protected by the umbrella of government and academic institutions.

When I founded the Institute of Nautical Archaeology ~~dozen~~ fifteen years ago, I made $13,000 a year as president, the vice-president made $8,000, and our only other staff member (who held an M.S. in marine science) made $3,000; our next employee, with a wife and two teen-age children, joined us at $8,000, and our next two, one with a Ph.D. in physics, signed up for $5,000. Some went through their life savings and sold their homes. We were gambling, but we found people who were willing to invest in our search for knowledge. We provided a good product, so our institute grew and prospered. I know what it was like being a little guy trying to make good, but I was never tempted to plunder an archaeological site.

I do not believe archaeologists base their case on false claims.

In summation, there should be no distinction between the protection of historic or archaeological sites on land and historic or archaeological sites under water. Further, there is no distinction between the archaeology of the Eastern Hemisphere and that of the Western Hemisphere. I have directed both land and underwater excavations in both hemispheres, so these statements are based on personal experience.

I believe that I speak for the vast majority of archaeologists in urging passage of this bill.

I am not a lawyer. I have no legal training. Thus I cannot address the question of admiralty law. I do not believe, however, that admiralty law was intended to deal with antiquities, but to deal with emergency, economic, and life-threatening situations. Admiralty law looks at peril to goods, amounts recovered, speed of recovery, and the risks taken by salvors to determine awards for salvors. None of this has to do with historic monuments, and thus the bill should not effect admiralty law. In fact, the only threat to most historic shipwrecks is their salvage. Once salvaged, a site is destroyed forever, which is why archaeologists take such pains to record, conserve and publish their excavations.

On the other hand, I believe that all states already have legislation and programs to protect historical archaeological resources, and thus are well suited to manage historic shipwrecks in their waters. As far as I know, no state prohibits sport diving on historic shipwrecks. Some provide in some way for compensation for recovery activities by private parties. I, personally, see no reason why private parties should profit at all from our heritage, but each state, under this bill, would be free to decide what is in its best interests in that regard.

Mr. Fisher, in his written testimony on H.R. 3558, proposed an alternate bill that provides "archaeological guidelines." The guidelines are concerned mainly with site mapping, records, artifact tagging, artifact handling, artifact processing and stabilization, artifact conservation, diver safety, and project supervision.

The processes described are techniques. Techniques, often based on common sense, are useful and even necessary to the archaeologist, but their utilization no more leads to true archaeology than the technique of using cameras and telescopes necessarily leads to true astronomy. In order to become an archaeologist, I studied at universities for ten years. In all the courses I took during those years, I never studied mapping, tagging, handling, processing, etc. Since becoming a university professor, I have trained well-known archaeologists who work both on terrestrial and underwater sites. None of these archaeologists studied mapping, tagging, handling, or processing in my courses. These are things learned quickly in the field, usually during summer apprenticeships; I received my practical training during two years at the American School of Classical Studies at Athens, Greece (two years not included in the ten years of formal university studies mentioned above). I teach techniques to members of my excavation staffs, but that does not make them archaeologists any more than skilled local laborers on land excavations are archaeologists. Their work is archaeology only if they have the academic background to understand as fully as possible its meaning. This is why we find it essential that the head of any archaeological project must be a professional archaeologist with total control over the project.

My point may be made by analogy. Anyone with steady hands probably could be taught to remove an appendix and to suture the incision. Why, then, are surgeons trained for years in medical school before they begin their residencies in surgery? Because medicine is much more than technique.

The public (and, seemingly, treasure-hunters) often think that fieldwork _is_ archaeology because it is the most visible part of archaeology. As stated in my original testimony, fieldwork plays a relatively modest role.

Eight years ago, Peter Stanford, President of the National Maritime Historical Society, asked me to comment on shipwreck protection in _Sea History_ magazine. I had failed so often in making a case for the protection of shipwrecks that I had almost given up. But I answered his request with a hastily drafted letter in the form of a "fable" or "short story." The story was mostly true, based on actual events, newspaper and magazine articles and editorials, photographs and correspondence. I simply changed shipwrecks into stars and archaeologists into astronomers in hopes of making my point. To my surprise, requests to reprint the "fable" have led to its being published in three American magazines and one Dutch magazine. It goes as follows:

The Men Who Stole The Stars

When I looked into the sky that night, I thought at first that a cloud covered part of the Big Dipper. But the crisp night air had not a trace of moisture. After cleaning my glasses and looking again, I realized that Mizar simply was not there any longer. I called the observatory of the university nearest me.

"There's a star missing," I said. "Mizar isn't there any more."

"We have no comment at this time," was the reply.

The next issue of Tempus, our leading news magazine, provided an explanation. Under the "Science" heading was a brief news item:

> "Astronomer Claude Blakely, after years of research and experimentation, has at last developed a method of capturing stars. For an undisclosed price, he has sold Mizar to an anonymous dealer in Geneva. The dealer, through a New York spokesman, assures the public that the star will be put on display in a private planetarium within the next two years, and that hundreds of citizens will be able to see it there."

I began a flood of outraged letters to magazines, syndicated editorial writers, and politicians. The stars, I said, belonged to everybody. Astronomers were supposed to map the stars, measure them, and study them in the most minute detail. But, I added, astronomers were supposed to be after knowledge. They were not supposed to own the stars. I didn't believe that Mr. Blakely should really be called an astronomer.

"Your attitude strikes me as hoity-toity," replied one of the best known of the columnists. "Claude Blakely knows more about astronomy than any Ph.D. or he couldn't have gone out and netted that star. And anyway, why should professional astronomers have all the stars? There are enough to go around. You're just jealous that you didn't make a buck out of it."

My response that the public as well as astronomers had a right to the stars, and that future generations had a right to see them, went unanswered.

Some of the public did write to their congressmen, but since most lived in smoggy cities and never saw the stars anyway, few letters were sent. A young congressman from one of the states with an exceptionally clear sky did, eventually, introduce legislation to ban star catching. By then, however, Blakely had sold rights to his star-stealing device to a number of partners.

"The clammy hands of big-brother government are trying to take away the hard won spoils of the last of the great inventors," thundered the columnist. "Claude Blakely and his partners represent the last frontier of free enterprise."

The night that I noticed Sirius was no longer in the sky, I opened the Newsletter of Private Star Lovers that had arrived in the afternoon mail. It had as a logo a bald eagle holding a star in its talons, flanked by waving American flags.

> "Fellow citizens. Write to your congressmen about the communist-inspired plot to take away our rights to catch and sell stars. There are millions of stars in the heavens, as any schoolboy knows. You can't even see some of them they are so dim. There cannot be any rational reason to keep them all up there. Especially when there are billions of dollars to be made by private investors. Stand up for your rights as Americans. Stand up for free enterprise."

By then the night sky was beginning to look a bit faded. Investors were after the really bright, sparkling stars first, so the first-magnitude stars were disappearing at an alarming rate.

Astronomers made joint and private outcries about what was happening. "Precious knowledge about the creation of the universe is being lost forever. It doesn't do me any good to see Betelgeuse in the cavern of some Austrian duke," one wrote. "It's been taken out of context."

A senator from a rather foggy state submitted a piece to a family weekly:

> "At last astronomy is making money, not simply spending it. Millions of dollars of National Science Foundation grants will now be saved that would otherwise have been wasted on larger telescopes and more radio telescopes. Have all the astronomers, spending all that money for centuries, ever made a

dime for the public? They talk about knowledge. Claude Blakely is the first one ever to show common sense!"

When Polaris was snatched, I was sure that the tide would turn in favor of amateur star gazers and professional astronomers. But, except for a few yachtsmen, most people were watching their TV screens and couldn't be bothered about it.

"Why didn't he use Loran to navigate?" my sister asked when she read the article about the sailor who lost his way because of the disappearing stars and ended on the rocks. "That's what all those satellites are for, anyway, isn't it?"

"They'll be snatching satellites next," I answered. I let the sharp photographs of the starry night sky drop one at a time in a pile on the floor between my feet. "That's the way it used to be," I mumbled.

Senator WIRTH. Dr. Bass, thank you very much for being here. Mr. Carr.

STATEMENT OF J. REVELL CARR, DIRECTOR OF THE MYSTIC SEAPORT MUSEUM, NATIONAL TRUST FOR HISTORIC PRESERVATION; ACCOMPANIED BY DAVID DOHENY, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. CARR. Thank you, Senator. My name is Revell Carr. I serve as Director of the Mystic Seaport Museum in Connecticut. I am past president of the Council of American Maritime Museums and the International Congress of Maritime Museums. I am also an archaeologist. I have worked in the wilds of northwestern New Jersey at the Tox Island Reservoir area.

But I am here today to speak on behalf of my fellow members of the board of trustees of the National Trust for Historic Preservation and its 190,000 members, and express our strong support for S. 858. I will submit my full testimony. I would like to make a couple of comments.

We are talking about endangered resources here, and some of these, of course, are ships from other nations. This is an international issue. I have just returned from the Sixth International Congress of Maritime Museums in Amsterdam. Numerous papers were given on the underwater resources issue. We are far behind the other nations. It appears to others as if we don't care about our maritime heritage. The French, the Greeks and Turkey and Australia—they have got solid, effective legislation, and we do not. We are giving the wrong impression. We need to preserve these resources.

We are sacrificing precious resources, and in other countries, these are being recognized and are being understood and studied by those people in those nations. The *Mary Rose*—for example, they found precious things that don't survive in the other environments. They found the unguent jar from the surgeon and his fingerprints from Henry VIII's time are still in that unguent. You learn something about medicine, about life ashore. This is not simply a maritime issue.

The maritime museums also play a particular role in the preservation of these objects. We are attuned to the preservation issues, and they are very complicated when you take the objects out of the water environment.

This kind of material is here, and it provides both knowledge for the scholar and it captures the imagination of virtually millions of Americans. At my maritime museum, over 500,000 people come each year. This is a resource. Our maritime heritage is the resource for the Nation.

It is not just a coastal issue either. Obviously, in lakes and rivers it is an important issue. The colonial bateaux have brought us information on the spread of migration throughout the country.

The Trust supports this legislation and has a couple of recommendations that it would like to make: first, that the legislation when it transfers ownership—this should be predicated on the ability of the States to administer the ownership of these sites.

The second critical point is that the bill as it is currently drafted only extends the protection to the three mile limit. And there are many wrecks, of course, beyond that, and the government has a contiguous area that it exert some authority out to an additional 12 miles. That should be considered.

And finally, as the bill is presently drafted, it requires that the public be given notice of the location of wrecks protected by the bill, and this is very dangerous. It opens them up to looting and vandalism, and we think that under National Historic Preservation Act, all properties should be protected whether or not they have been—whether public notice has been given of them.

Thank you, Senator.

[The prepared statement of Mr. Carr follows:]

National Trust for Historic Preservation

Testimony of

J. REVELL CARR

on behalf of

THE NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE

September 29, 1987

Mr. Chairman and members of the Subcommittee, my name is J. Revell Carr and I serve as Director of the Mystic Seaport Museum located in Mystic, Connecticut. I come before you today on behalf of my fellow members of the Board of Trustees of the National Trust for Historic Preservation in order to express our strong support for S. 858, the Abandoned Shipwreck Act of 1987, and this committee's efforts to protect historic shipwrecks, an irreplaceable part of America's heritage.

As the Congressionally chartered leader of the nation's private sector historic preservation movement, the National Trust has taken a continuing and strong interest in matters relating to the preservation of our maritime heritage. While our 190,000 members maintain an interest in a diverse range of historic resource types, our maritime heritage has always held a special place in our hearts.

For the past 10 years, the National Trust has maintained an active maritime preservation program, in which marine archeology is an important part. We have worked with archeologists, museum professionals and diving enthusiasts to encourage the identification, protection and preservation of underwater archeological resources.

Our Endangered Maritime Heritage

Our experience in the maritime archeology field and our legal analysis of the present situation leads us to conclude that historic shipwrecks are, without doubt, the single most

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endangered category of historic resources in our nation today. A combination of conflicting federal case law and continuing uncertainty by state governments on the extent of their authority to regulate salvage has combined to create a situation where historic shipwrecks and the valuable historical information they contain are essentially unprotected.

Ironically, this situation is worsened by the increasing availability of technologies that will aid the location of shipwrecks. These technologies will hasten the rate of discovery and, without proper protection, the rate of destruction of historic resources.

Today, historic shipwrecks are subject to salvage operations that do not protect their value as archeological sites and result in the loss of crucial data on the discovery, exploration and development of this nation. In addition, valuable information about maritime technology, international and inter-regional trade, and the seafaring life is being lost forever.

Salvage operations that fail to adequately map the underwater location of objects and vessels forfeit the information that trained scientists could gain from studying the relationship of objects to each other. Where recovery techniques fail to recover all of a vessels contents -- both those objects that have market value and those of scientific value -- archeologists lose pieces of the complex puzzle that is the story of a vessel and its times. Finally, where proper conservation techniques are not employed to a vessel and its contents, the rapid deterioration of ancient materials exposed to surface conditions denies archeologists the ability to compare materials from one find with others. It also denies citizens the opportunity to see artifacts and learn about these wrecks through museum display.

Needed Action

For these reasons we welcome the Committee's interest in developing effective legislation that will provide for the protection and management of historic shipwrecks and their contents located within the territorial waters of the United States.

The National Trust believes that the passage of S. 858 will go a long way toward protecting our irreplaceable heritage of historic shipwrecks. The bill would, most significantly, remove many historic shipwrecks from the jurisdiction of federal admiralty law and place management of such wrecks in the hands of the states whose waters they are located in.

The uncertain applicability of admiralty law has placed state officials who seek to protect the nation's interest in historic shipwrecks in an untenable position. If they seek to place what they believe to be a proper level of archeological requirements on an excavation, they face the threat of an admiralty law challenge. If they do not impose such requirements, they face criticism for failing to protect our heritage.

Recently, despite the best efforts of state preservation officials, treasure salvors damaged, in a vain attempt to recover treasure, the H.M.S. Debraak, an English military vessel that sank off the coast of Delaware in 1797. Lifted by cables without benefit of a proper cradle, salvors ripped into the hull and dropped much of its contents and interior on the sea floor. The salvors then employed a clamshell bucket to dump the remains of the vessel into a road construction rock sorter to sift for treasure. These techniques denied archeologists the information they might have gained from a careful study of the exact location of artifacts on the ship.

The threat of admiralty law litigation restrained Delaware's ability to condition the salvors efforts. A successful admiralty law challenge would have placed control of the wreck in the admiralty courts and removed all state leverage over the recovery techniques. Such litigation would also have cost Delaware's taxpayers tens of thousands of dollars.

We applaud S. 858 because it would properly and clearly remove historic shipwrecks from the jurisdiction of the federal admiralty courts and vest the authority to regulate the exploration and salvage of historic shipwrecks in the states. State governments throughout this nation are seeking such authority and several have distinguished records of achievement in the maritime archeology area.

Suggested Modifications

The National Trust would like to recommend certain modifications to S. 858 that we believe will make this legislation more effective.

First, while the legislation's transfer of ownership and regulatory authority to state governments should be the ultimate goal of any legislation in this area, consistency with the other elements of the national historic preservation program demands that such a transfer of authority be predicated on states having effective mechanisms and procedures for exercising regulatory authority.

Under the National Historic Preservation Act of 1966, as amended, state governments may exercise primary responsibility for designating and protecting historic properties and archeological sites on land where they meet established standards. Today, all states, territories and the District of Columbia meet such standards and are full participants in the national historic preservation program. Unfortunately, this program stops at the water's edge.

Accordingly, legislation to protect historic shipwrecks should demand an achievement of minimum standards prior to a transfer of authority to regulate and protect historic shipwrecks. S. 858 already directs the Advisory Council on Historic Preservation to promulgate such standards which could be administered, as with the rest of the national preservation program, by the National Park Service.

Where states lack the capacity or procedures to regulate historic shipwreck exploration and salvage, their exercise of regulatory authority would be insufficient to guarantee the protection of the national interest in these cultural resources. In such cases, interim federal management is necessary. Such management is most appropriately vested in the National Park Service.

Second, we are concerned that the bill, as currently drafted, does not attempt to extend federal protection to historic shipwrecks that are beyond the territorial waters of the United States and outside state submerged lands. While transfer of title to historic shipwrecks outside of state submerged lands may not be possible, we urge the Committee to explore methods, consistent with U.S. and international law, that would remove or modify admiralty court jurisdiction.

Finally, as presently drafted, S. 858 would require the that the public be given notice of the location of wrecks protected by the bill. Under the National Historic Preservation Act, public notice of the location of archeological sites is not required so that sites can be protected from vandalism. Likewise, such notice in the case of historic shipwrecks is counter to the purposes of the legislation. Publication of a wreck's location may make it more vulnerable to inappropriate exploration and destruction. More importantly, wrecks whose exact locations are not currently known would remain wholly unprotected.

S. 858 would also require the Secretary of Interior to make a written determination of a wreck's eligibility for listing in the National Register of Historic Places before a wreck would be eligible for the bill's protections. Such a requirement would leave unprotected any shipwreck where designating authorities do not receive any notice of the discovery in order to make a formal eligibility determination or nomination of the property to the National Register of Historic Places.

Under the National Historic Preservation Act, all properties are protected whether listed or eligible for listing. No formal determination of such eligibility is required for protections to apply. We therefore recommend that the legislation be modified to conform to the requirements of the national preservation program.

Conclusion

Mr. Chairman, I want to associate myself with National Trust President J. Jackson Walter's remarks before the House Oceanography subcommittee in summarizing the current situation. He stated that

> as a nation we would not tolerate a commercial enterprise that bulldozed Gettysburg and then dumped the remains through a sifting machine to recover any valuable objects. Yet this is exactly what current law allows treasure hunters to do to our nation's maritime legacy. This legacy is not the property of any syndicate of investors, daredevil treasure seekers or, even, well meaning sportsmen. It is the property of the nation as a whole and the nation as a whole is not currently protecting its interests in the heritage of historic shipwrecks.

In closing, let me reiterate our commendation of the Committee's interest in this legislation and commend Senator Bradley and the co-sponsors of S. 858 for their determination to protect such an important part of our heritage. The National Trust is available to assist the Committee in its work and would welcome the opportunity to work with you and your staff to address the modifications we have suggested today. We appreciate the opportunity to appear before you and look forward to working with the Committee in the future.

Senator WIRTH. Mr. Carr, thank you very much.

Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman. Let me thank the panel.

I think that much of your testimony is in direct refutation of some of the testimony of the earlier panel. I wonder if you could restate what are the two or three things that you would most dispute in the panel of the other witnesses so that we could get a dialogue here. There have been a number of contradictions—and you have covered some of them already. But I think from the standpoint of being succinct, it would be good to hear what are the two or three things that you find that you would most disagree with.

Let's start with Mr. Taylor.

Mr. TAYLOR. Senator Bradley, one of the points that Mr. Horan stated that was that they wanted consistency between States. He pleads for the continuation of the Federal court and admiralty system. Yet, Senator, there is no guarantee there is any kind of consistency between two judges.

As an example, in my State, there have been two court decisions by two different Federal judges sitting in the Southern District of Florida with shipwrecks not more than miles apart, and their decisions were 180 degrees apart. One said the Federal Government could protect their shipwrecks, and the other said the State's law protecting shipwrecks was unconstitutional and admiralty jurisdiction applied.

There is no ability to have consistency between courts. The only consistency can be they have a consistency within a State limit to allow those governmental bodies to manage the resource consistently within it.

The one other comment that someone made is that if there is a permitting or some kind of a system set up by a State government whereby sport divers would be limited—first of all, I take issue with that—but just hypothetically, even if there were, most States like Florida have an APA type of operation. And if you had to get a permit from someone as you would in Florida to do a commercial excavation, those permits are made known to the public. The public has a right to come in and make their feelings known. And if someone is denied a permit, they have recourse in the Florida judicial system which oversees both the law and the rules and regulation written for those laws.

Senator BRADLEY. And your basic point is that the State is in a better position to take into consideration a variety of different influences, and is in a better position to weigh the policy towards shipwrecks than are 100 different judges.

Mr. TAYLOR. That's correct. And primarily the problem is that when a case is filed in court, there is very little notification.

Senator BRADLEY. Right.

Mr. TAYLOR. And how does the public know their interest is even being affected?

Senator BRADLEY. Now, let me ask you one other question. You mentioned this State underwater park.

Mr. TAYLOR. Yes.

Senator BRADLEY. Has the State considered any additional undersea parks that would focus on sea wrecks?

Mr. **Taylor**. Oh, yes, sir. This is the first one that has been opened. It has taken two years to get it together, but primarily the problem has been monetary. I have spent most of these years in court. That money—if we didn't have to go to court and fight these questions, that money being spent by the Division of Historical Resources could go to opening more parks. This is but the intended first of many.

Senator **Bradley**. Well, what is the underwater park?

Mr. **Taylor**. Okay.

Senator **Bradley**. No. I mean, what is it? Here's the water. Right?

Mr. **Taylor**. All right.

Senator **Bradley**. And then on the bottom you have shipwrecks.

Mr. **Taylor**. Yes, sir. This is a——

Senator **Bradley**. So, you declare that a land——

Senator **Fowler**. Fish in between.

Senator **Bradley**. Fish, land in between is a park?

Mr. **Taylor**. Basically it's an outline——

Senator **Bradley**. That gives you what jurisdiction?

Mr. **Taylor**. Excuse me?

Senator **Bradley**. That gives you what jurisdiction?

Mr. **Taylor**. If I understand your question correctly, this is on Florida land. And so, it is our land to obviously do what we wish. It is a 1715 ship that within a certain area around it, the remnants of the ship are located. They have marked it off by various buoys and dive anchors where people can go tie up or walk from the beach, swim out, and in fact to do snorkeling or diving on the site.

Senator **Bradley**. OK.

Mr. Bass, what are your two or three major objections?

Dr. **Bass**. I have three that I have listed, since you ask the question. One is the idea that free enterprise does it better. Of course, I am not against free enterprise. My Institute of Nautical Archaeology depends on——

Senator **Bradley**. Would you speak more slowly so that I can understand you?

Dr. **Bass**. Yes, all right.

Mr. Horan said that free enterprise is a better approach to shipwreck management. I would like to ask where is a single reconstructed ship on the face of this earth that was done by free enterprise treasure hunters, such as the *Vasa*, such as the *Mary Rose*, such as the only classical Greek ship in existence which you can see in Kyrenia, Cyprus that we restored, such as the medieval ship, the earliest example of a modern seagoing ship ever excavated. We are now restoring that in a museum in Bodrum, Turkey.

We will restore the hulls of the ships as well as simply bringing in the artifacts because there is a misunderstanding of what archaeology is. It has very little to do with finding things, or it has nothing to do with techniques. That is like saying knowing how to look through a telescope and take photographs makes you an astronomer.

The second point is that somehow this legislation is aimed at preventing sport divers from diving on wrecks. I think that one of the reasons we would like to save wrecks is so that the sport divers of future generations will have interesting things to dive on and see. I have worked in the Mediterranean, and in some of the countries where the wrecks were not protected, I would say that most wrecks within diving depths have been stripped clean. And I would hate that to happen in our waters.

I would also point out that the president of our Institute of Nautical Archaeology and my chief assistant, who will become the director of the Bronze Age shipwreck excavation in Turkey, were both sport divers when they joined my group just as simply amateur volunteers, and then they became interested in the archaeology.

And the third is the question of why the States, rather than the Federal Government, should have something to do with the protection of these sites, management of these sites. I would only say that the States have a proven record of managing historic monuments on land. And as I think I have made clear, I don't see any distinction between historic monuments under water and those on land. So, those are the three points I would make.

Senator **Bradley**. And then, Ms. Giesecke——

Ms. **Giesecke**. Yes.

Senator **Bradley** [continuing]. You had one or two? I would like to also—in an article you wrote, Coastal Management Journal, in 1987 you pointed out that over a 20 year period, from 1963 to 1983, out of 27 States that had laws relating to sport divers, no State prohibited sport diving on historic shipwrecks, and 13 of the 27 provide State compensation to private parties for recovery activities. Is that correct?

Ms. **Giesecke**. Yes, sir. That is correct.

Senator **Bradley**. So, what one or two questions would you raise?

Ms. **Giesecke**. There was a comment made earlier about how much States have spent. A survey was done by the National Conference of State Historic Preservation Officers in 1983, and at that time the States reported having spent $3.2 million on the study of underwater sites, both prehistoric sites and shipwreck sites. Most of the work that was done at that time and is being done now is done through participant funding. Groups of sport divers organized as sport diving clubs or historical societies get together and fund themselves to go and map and excavate shipwrecks. And that is really how our maritime history is being written.

States have been characterized in various ways. But from a sport diver perspective, as I said in my testimony, we are finding that things are going well.

Senator **Bradley**. You are a sport diver, right?

Ms. **Giesecke**. Yes, I'm a sport diver.

And the examples that we are most concerned with are efforts by Florida to establish artificial reefs for sport diving.

In Vermont on their underwater preserves, they have actually put mooring systems so that it protects the shipwrecks and divers can come up in their boats and attach to the moorings and go down and dive. They are not allowed to collect on the shipwrecks which are therefore wonderful subjects for photography because they have all these artifacts and lines and bits of sail hanging from them on the bottom of Lake Champlain.

Maine a few years ago did a project, a Revolutionary War ship called the *Defense*, which during the time it was excavated, used the labor of 176 sport divers to actually do the excavation. There was a lead archaeologist who subsequently wrote up the academic report or popular reports on that subject.

Michigan is another State which has underwater preserves, and where you have a good example of the kind economy or economic impact that sport diving can have. In Michigan you had a situation where a lot of shore communities were based on sport fishing for their economy. The fish died out in the lakes, and those economies were in very poor shape. One example is Alger County and Thunder Bay. They had a county income of about $1.3 million. They established an underwater preserve, started advertising and encouraging the sport diving activity in that area, and have raised their gross income in that county to $6 million a year. So, it has had a significant economic impact and something that is being copied by other Great Lakes communities.

Senator BRADLEY. So, your argument is basically, among others, that the bill would promote sport diving.

Ms. GIESECKE. Yes. The States may have had the legal authority, certainly with this bill will have the clear legal title to these wrecks, and will have to take responsibility for managing them. Some States have been able to say, well, this is in litigation or this isn't clear, and not taken the responsibility to really put efforts into this.

With some encouragement, I think that the trend we see in Vermont and Florida and Michigan and California will continue, and the States will encourage sport diving.

Senator BRADLEY. All right. Thank you very much. Thank you, Mr. Chairman.

Senator FOWLER [presiding]. Thank you all, ladies and gentlemen, very, very much for your testimony.

Panel three on H.R. 2121: State Representative Mike Snow of Chickamauga, Georgia; Hal Rives, Commissioner of the Georgia Department of Transportation; Mr. Bruce Craig, Cultural Resources Coordinator, National Parks and Conservation Association in Washington.

STATEMENT OF HON. WYCHE FOWLER, JR., A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator FOWLER. As a way of beginning and for the general public, I offer the following dramatic presentation.

Early on the morning of September 23, 1863, a wing of the Confederate Army of Tennessee, commanded by Bishop Polk assaulted Union positions held by Major General George Thomas along the LaFayette Road. By mid-afternoon of that day, a Confederate soldier described the scene: "Columns advancing over bodies piled up like cordwood, and the sluggish Chickamauga Creek running red with human blood." By day's end, the Confederates held the important road to Chattanooga after a contest that cost 35,000 of our ancestors killed and wounded.

Early on this September morning in 1987, like every morning, there was a tremendous traffic jam. Four lanes of traffic converged through the narrow two-lane stretch of LaFayette Road, now U.S.

Highway 27, that passes for 3.7 miles through the Chickamauga and Chattanooga National and Military Park.

The road south from Chattanooga is an important artery today just as it was when armies fought over it in 1863. And so, an irresistible force once more meets an immovable object.

The present demands for the growth of these north Georgia communities, Chickamauga, Fort Oglethorpe, LaFayette, Rossville, Noble, contend with a pass that cannot change and must not be forgotten.

The issue before us today is very simple. What are we going to do about the 14,000 commuter vehicles that go through the Chickamauga National Park?

I'll put the rest of my statement in the record.

[The prepared statements of Senator Fowler follow:]

Opening Statement
SENATOR WYCHE FOWLER, JR.
Public Lands, National Parks & Forests Subcommittee
of the Senate Committee on Energy & Natural Resources
Hearings on HR 2121
September 29, 1987

Early on the morning of September 23, 1863, a wing of the Confederate Army of Tennessee commanded by Bishop Polk assaulted Union positions held by Major General George B. Thomas along the LaFayette Road, 12 miles south of Chattanooga.

By mid-afternoon of that day, a Confederate soldier described the scene: columns advancing over bodies piled up like cordwood, and the sluggish Chickamauga Creek running red with human blood.

By day's end, the Confederates held the important road to Chattanooga, after a contest that cost 35,000 of our ancestors killed and wounded.

Early on this September morning in 1987, like every morning, there was a traffic jam: four lanes of traffic converged through the narrow two-lane stretch of LaFayette Road -- now U.S. Highway 27 -- that passes for 3.7 miles through the Chickamauga and Chattanooga National Military Park.

The road south from Chattanooga is an important artery today, just as it was when armies fought over it in 1863. And so, an irresistable force meets an immovable object. The present demands for the growth of these north Georgia communities -- Chickamauga, Fort Oglethorpe, LaFayette, Rossville, Noble -- contends with a past that cannot change and must not be forgotten.

The issue before us today is a bypass to allow the 14,000 commuter vehicles that travel this road daily to go around the park.

The State of Georgia had been perfectly willing to meet the cost of this transportation need by widening the highway through the park. But this would destroy the aesthetics and the historical integrity of the park, since the road itself was the focus of the struggle. The battle lines were drawn up on opposite sides of the road. Markers now line each side where the descendants have commemorated those who fought and fell there.

It would be a sorry statement on our respect for our own heritage, to allow the congestion of carpools and diesel trucks in our national park to continue. The battle that took place there was part of a struggle which, more than any other, determined our course and character as a nation. The Chickamauga battlefield was the first national park set aside in remembrance of this conflict. It was established in 1890. For that reason, it is very close to its original appearance.

Since the highway bypass we are discussing is necessary to protect this national treasure, I believe it is appropriate to provide federal assistance to this project. The proposed bypass will cost ten times more than the mere widening of the road, a burden too heavy for the local communities to bear.

HR 2121 authorizes the Department of Interior to provide 75 percent of the funds necessary for this project, at a site to be determined by Interior and the Georgia Department of Transportation.

This is a solution that is agreed upon by all the state and local officials involved.

It has already passed the House of Representatives, and I hope the Senate will also act to resolve this unique problem, to meet the pressing transportation needs of these communities and, at the same time, end the deterioration of this important national park.

STATEMENT OF SENATOR FOWLER ON S. 858, THE ABANDONED SHIPWRECK ACT

MR. CHAIRMAN, I WOULD LIKE TO SAY JUST A FEW WORDS IN SUPPORT OF THIS IMPORTANT PIECE OF LEGISLATION. I COMMEND MY COLLEAGUE, SENATOR BRADLEY, FOR HIS FORESIGHT IN INTRODUCING THIS BILL AND FOR HIS EFFORTS ON ITS BEHALF.

THIS LEGISLATION IS NECESSARY IN ORDER TO CLEAR UP AMBIGUITIES IN THE OWNERSHIP AND ADMINISTRATION OF HISTORIC SHIPWRECKS. IT IS FRANKLY AMAZING TO ME THAT OURS IS THE ONLY COUNTRY IN THE WORLD WITH A SUBSTANTIAL NUMBER OF HISTORIC SHIPWRECKS THAT DOES NOT HAVE A NATIONAL LAW RECOGNIZING THE IMPORTANCE OF PRESERVING SOME OF THESE SITES. THESE SITES ARE IMPORTANT TO OUR HERITAGE, AS SIGNIFICANT AS MANY OF OUR "LAND-BASED" HISTORIC SITES IN HELPING US TO UNDERSTAND OUR NATION'S PAST.

IT SHOULD BE POINTED OUT THAT S. 858 IS NOT AN ATTEMPT TO RESTRICT APPROPRIATE ACTIVITIES IN AND AROUND HISTORIC SHIPWRECKS. BY CLARIFYING STATE AUTHORITY IN THIS AREA, THE ABANDONED SHIPWRECK ACT SEEKS TO ENSURE THAT STATES PROTECT NATURAL RESOURCES, GUARANTEE RECREATIONAL EXPLORATION OF SUNKEN SITES, AND ALLOW FOR RECOVERY OF SHIPWRECKS IN A MANNER CONSISTENT WITH THE PUBLIC INTEREST, AS DETERMINED BY EACH INDIVIDUAL STATE.

MR. CHAIRMAN, I WHOLEHEARTEDLY SUPPORT THE AIMS OF THIS BILL AND LOOK FORWARD TO ITS FAVORABLE CONSIDERATION.

STATEMENT OF SENATOR FOWLER ON H.R. 1983

Mr. Chairman, I commend my colleagues, Senators Chiles and Graham, for their efforts on behalf of this worthwhile and significant piece of legislation. My friend and former colleague in the House, Congressman Bennett, deserves our praise for his leadership and hard work on this issue.

The St. Johns River area, just south of my home state, offers us an unusual opportunity to preserve lands of historic, environmental, and economic value. The treasures of this area tell an important part of the story of our nation's beginnings and include sites remaining from French, British, and Spanish settlements. The wetlands in this area are rich and productive, providing habitat and breeding grounds for numerous species. And the fisheries of northern Florida depend on these species for their livelihood. My tenure in the Senate has been short, but I do not know of a parcel more appropriate for protection that has come before this panel.

I look forward to our favorable consideration of H.R. 1983, and I offer its sponsors my unconditional support.

Senator **Fowler**. We have three worthy representatives today to talk about H.R. 2121 and a recommended solution.

State Representative Mike Snow, we welcome you. Please proceed in any way you would like. You may summarize your testimony to this vast array of Senators, and I will make sure that all of your testimony is put into the record. We welcome you.

STATEMENT OF MIKE SNOW, STATE REPRESENTATIVE, STATE OF GEORGIA

Mr. **Snow**. Senator, I do appreciate being here, and you all inviting us up, Senator Fowler. And we want to thank Representative Buddy Darden for the great job he has done in promoting his House Resolution 2121.

For a while there I thought it might be a bad omen. I was telling Hal here I was afraid that road was going to get shipwrecked a little while this afternoon. But I hope it is not a bad omen for us.

Senator **Fowler**. Well, you had a great lesson with all of them gone. It's an old Chinese proverb. If you want the definition of water, you don't ask a fish. [Laughter.]

Let's see what we can do on the road building.

Mr. **Snow**. The road in question, of course, is the 3.7 mile LaFayette Road. And a lot of people say if William Tecumseh Sherman had brought his crowd down through Highway 27 through Chickamauga Battlefield today, he wouldn't get to Atlanta down there—in your former district down there, Senator—wouldn't get to Atlanta in time for the burning. And that's how we feel about it in our part of the country.

To the north of us there, the Chickamauga Battlefield, is the major urban area of Hamilton County, Tennessee, the Chattanooga, Tennessee area. To the south is the industrial area, Walker County, Georgia. Even in 1905, the National Military Park Commission who governed the park under the War Department acknowledged that the population was rapidly increasing there causing an upsurge in the road use in and around the park.

Today to the south the Governor of Georgia, the Speaker of the House of Representatives, and our Transportation Commission of the State have all vowed to pave the U.S. Highway 27 from south of the park all the way to the Florida line and make it a five lane showplace of a highway in the next few years. And the 14 mile section directly south of the park is to be completely five-laned and ready for opening by the end of this year. It is going to be a bottleneck going through there.

Widening the current section of the highway through the park has been talked about since the 1930s. My forefathers talked about widening that road. In 1973 removal of historical markers and cannon along U.S. Highway 27 were relocated in anticipation of the widening. And for years unsuccessful attempts have been made to route the traffic, especially trucks, around the park on alternate highways to eliminate the congestion and the danger to park visitors.

Another plan was to go around the western edge of the park and close the current road to all but visitors. And that plan envisioned relocating the highway around the west boundary of the park and restoring the battlefield to its 1863 appearance. We are really wanting to keep that road open through the park though probably. But we need this road around it for the congestion on the park and allow the visitors in the park to see the park.

Budget cuts in 1981 again stalled the project as it had been stalled for the last 30 years.

The project got on track, as I said earlier, when Congressman Buddy Darden made a concerted effort in the decision on whether or not the road would be built through the park or around it. The Interior Department decided that in no way would the road be built through the park. Interior head Hodel and Park Service head Mott have made it clear to all of us that the road would not go through the park, that a western route is the only alternative.

A great many of our citizens don't understand why we just can't build a road through the park. So what about a few monuments displaced. Many of the residents on the western side of the park that will be affected by the relocation of the highway feel this way also. Others don't want a leaf disturbed. They feel the battle was fought there, and they don't want it destroyed by making a super highway. A modern five lane road will bottleneck into Chickamauga Battlefield as stated early next year on both sides into a two lane road.

We love that battlefield and my northwest Georgia area. We understand, at least most of us, that we must go around the park if we want adequate transportation. We, however, cannot help the fact that the largest national battlefield—and I emphasize this—the largest national battlefield in the country is located in our urban area. Imagine this battlefield located between Marietta and Atlanta, Georgia. We need help, and we need that help from the keepers of this land.

Thank you.

[The prepared statement of Mr. Snow follows:]

THE TRANSPORTATION PROBLEMS ASSOCIATED WITH CHICKAMAUGA NATIONAL MILITARY PARK

In September of 1895, after many years of work by various veterans groups, historians and local residents, a great memorial to many thousands of brave men was dedicated on the hallowed ground of Chickamauga.

Many dignitaries from various states represented at the battle were there, as well as governors, senators, generals who led the troops, and the lowest ranking private who fought in the hand-to-hand, bayonet-to-bayonet inferno. The papers of the day only noted the size of the crowd on hand (many thousands). The Walker County Messenger strongly acknowledged the sobriety of the throng gathered there like it must have been a rare occurrence in those days to find that many people, especially veterans of the great war, entirely sober.

The Chattanooga papers, however, must have recognized others in the crowd with slightly less approval. The Chattanooga Times commented that South Carolina's Governor sent a South Carolina representative to locate the lines of South Caroina troops, but this purpose was frustrated when he "partook too freely of intoxicants". He was sent home and another veteran of the conflict appointed.

All in all, the participants enjoyed the afternoon of speeches and, according to one newspaper, the politicians spoke all too freely of and for themselves.

On that day approximately 5,600 acres of parkland were dedicated to the new battlefield, as well as many tons of monuments and cannon that were still being placed in the newly-purchased land.

Looming behind the speechmakers, merrymakers and thousands of veterans was another monument to this National Battlefield Park that would hold future generations history, would provide them transportation as a major artery to their employment, but as the years progressed would eventually become a major obstacle for them, much as it did for the Confederate and Union Armies as the Battle of Chickamauga swayed back and forth across that same road in that hot afternoon sun in September of 1863.

The road in question is the 3.2 mile LaFayette road (U.S. Highway 27) which bisects the Park in the middle. To the north is the major urban area of Hamilton County, Tennessee (Chattanooga). To the south is the industrial area of Walker County, Georgia. Even in 1905 the National Military Park Commission, which governed the Park under the War Department, acknowledged that the local population was rapidly increasing, causing an upsurge in road use in and around the Park. "These roads", wrote Commission Chairman Carmen, "are the great thoroughfares from Chattanooga to Northwestern Georgia". In 1905 Carmen advised the War Department that funds were needed to complete ongoing road work at a cost of $950 per mile.

By 1915 over 90 miles of improved road existed throughout the Park, with the government, to the appreciation of surrounding counties, paving access roads (including LaFayette road) with what then was first-class roadway of macadam (rock and gravel with tar) complete with rock drainage ditches 32 feet wide in all.

In 1931 plans were made to cement all primary roads going into the Park. The LaFayette road through the Park became U.S. Highway 27 with CCC Camps locating in the Park to help with these roads throughout the Thirties. These Conservation Corps Camps employed thousands of people over the years and they built roads that are mostly still in use today. The funds were Public Works funds administered by the Bureau of Public Roads.

In 1934 the Park was transferred to the Department of Interior from the War Department's control as part of the New Deal of the early Thirties. The Superintendent of the Park, Mr. Richard Randolph, was in charge of national parks from Stones River in Tennessee to various Florida locations.

Little has changed in the status of U. S. Highway 27 since the CCC people built the road in the early Thirties. In 1962 U. S. Highway 27 was five-laned north of the Park through Fort Oglethorpe and Rossville to Chattanooga. This area has gone from a military base (6th Army Cavalry) through the two World Wars to one of the largest urban areas in Northwest Georgia.

To the south, the Governor of Georgia, Speaker of the House, and now the Transportation Commissioner of the state have vowed to pave U. S. Highway 27 from south of the Park all the way to Florida and make it a five-lane showplace of a highway. The 14 mile section directly south of the Park is to be completely five-laned and ready for opening by the end of this year.

Widening the current 3.2 mile section of the highway through the Park has been talked about since the Thirties. In 1972 historical markers and cannon along U. S. Highway 27 were relocated in anticipation of the widening.

In 1976 Superintendent Robert L. Deskins filed a "Statement of Management" for the Chickamauga and Chattanooga National Park. He said "Chickamauga National Military Park is subjected to intense recreational pressures leading to crowding and non-conforming uses which are often in direct conflict with the original purpose of the Park. It is bisected by a major U. S. highway which is the main thoroughfare through the western portion of Georgia when traveling north to south. The major single unit of the Park (Chickamauga Battlefield) is constantly forced with uses incompatible with the historical theme of the area". Clearly, the Park's location in a highly urbanized location threatened its deviation from the course chartered in 1890, promoting philosophical as well as practical questions regardings its direction in the future.

For years unsuccessful attempts had been made to route through traffic, especially trucks, around the Park on alternate highways to eliminate congestion and danger to park visitors. Another plan was to build a four-lane road along the western edge of the Park and close the current road to all but visitors. That plan envisioned relocating the highway around the west boundary of the Park and restoring the battlefield to its 1863 appearance. Another plan was to build the new four-lane highway for commuters to the west, retaining the old road for Park visitors. This plan contemplated the removal of seventeen stone monuments, one of them weighing forty-two tons, from the path of the newly projected highway onto adjacent ground. The road was ready to be built, however, legal compliance requirements of the Advisory Council on Historic Preservation delayed the project. Budget cuts in 1981 again stalled the project.

The project got on track again two years ago when Congressman Buddy Darden made a concerted effort in a decision of whether or not the road would be built through the Park or around it. The Interior Department decided that in no way would the road be built through the Park. Interior Secretary Hodel and Park Service Director Mott have made it clear to all of us the road would not go through the Park, that a western route is the only alternative.

The Georgia Department of Transportation has estimated from 3 to 6 million dollars to build the road through the Park and 25 to 30 million dollars to go around it.

A great many of our citizens do not understand why we just cannot build a road through the Park. So what about a few monuments displaced! Many of the residents of the western side of the Park who will be affected by relocation of the highway feel this way also.

Others do not want a leaf disturbed in the Park, they feel the battle was fought over that road and they do not want it destroyed by making it a super highway. A lot of our neighbors to the north in Chattanooga (a much larger populated area than our own) feel the Park should stay as it is and we are sure they are making their feelings known, although not as vocally as we. They probably visit the Park more than we and use the recreational facilities, bicycling and picknicking, etc., as much as we do.

I represent the people of Walker and Dade Counties. We need good roads to get our children to work in the future. We need economic growth in the southern and western sections of Walker County to sustain the economies of our people. Without adequate transportation they will wither and die if we do not provide this transportation for the future. A modern five-lane road will bottleneck into Chickamauga Battlefield early next year on both sides into a two-lane road.

We love that battlefield. We understand, at least most of us, that we must go around the Park if we want adequate transportation. We, however, cannot help the fact that the largest national battlefield in the country is located in our urban area. We need help and we need that help from the keepers of this land.

Senator **Fowler**. Thank you very much.

Commissioner Rives, Georgia Department of Transportation, we welcome you as always.

STATEMENT OF HAL RIVES, COMMISSIONER, GEORGIA DEPARTMENT OF TRANSPORTATION

Mr. **Rives**. Thank you, Senator.

I am here today to support the passage of H.R. 2121. But I do so reluctantly and with mixed emotions. H.R. 2121 represents the only possible compromise in an impasse that in my opinion has arisen out of an ill-considered position taken by the National Park Service. The position is that you shall not widen U.S. 27 and in its current alignment regardless of cost and money and social disruptions.

Consider these points. The Department of Transportation is prepared to widen U.S. 27 from two lanes to four lanes through the park at no cost to the Federal Government. This cost is estimated at $2.9 million. No homes, farmlands, or businesses will be taken. No monuments would have to be moved, but numerous information plaques would have to be relocated.

I might add that in the early 1960s some large monuments were moved. I personally supervised the moving of a single shaft monument, 50 feet high. It was moved successfully about 18 feet, and there was no damage to it. This movement was to accommodate highway construction, and it was done without damage.

The additional right-of-way for this construction would be 30 feet for some 3.32 miles or 11.7 acres.

An alignment developed by Federal Highways that I understand is acceptable to the National Park Service would cost $29 million to construct. It will displace 24 homes, two trailers, and it will remove some 100 acres of land from private ownership. The local tax base will forever be diminished, and citizens will be disrupted.

The only disruptions from widening in place should be numerous plaques, no monuments, and the cost would be $2.9 million.

The National Park in its wisdom has said no, never. You cannot violate and ruin the park. I would submit to you that logic defies the statement that the park would be ruined. U.S. 27 is not the same road and is not in the same, exact location or alignment or width as it was when the battle was fought. It was a road suitable for wagons and horse-drawn vehicles. If it were the same, having never been straightened, having never been widened, having never been paved, I would agree with the National Park Service, but this is not the case. We are not preserving the road as it was when the battle was fought. We are preserving the road as it was when it was constructed back in the 1930s.

Having got this out of my system—and it serves a purpose of establishing financial responsibility—I will say that Georgia DOT, because the traffic problem must be handled and because in this case a bad and illogical compromise is better than nothing at all, will engineer and construct the replacement highway along the Federal Highway Administration's alignment and will contribute to the cost of such a project the amount it would have spent in widening in place some $2.9 million or 25 percent of the total cost of the project, whichever is greater.

Not acceptable, however, is any move to fund the excess over the $2.9 million we will contribute from our normal Federal aid highway allocations or from any source that will reduce our 85 percent allocations. In other words, the funding will have to come out of some source other than title XXIII, since the relocation is a requirement of the National Park Service the only purpose of which is to remove traffic from the park and is not necessary for transportation purposes.

Based upon these compromised conditions, we support the passage of H.R. 2121.

[The prepared statement of Mr. Rives follows:]

STATEMENT

OF

COMMISSIONER HAL RIVES
GEORGIA DEPARTMENT OF TRANSPORTATION

BEFORE

SENATE ENERGY AND NATIONAL RESOURCES COMMITTEE

ON

H.R. 2121

SEPTEMBER 29, 1987

STATEMENT OF
COMMISSIONER HAL RIVES
GEORGIA DEPARTMENT OF TRANSPORTATION

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,

I APPRECIATE THE OPPORTUNITY TO BE WITH YOU THIS AFTERNOON TO DISCUSS HR 2121 WHICH ADDRESSES A VERY SERIOUS PROBLEM WITH TRAFFIC SAFETY AND CONGESTION IN THE CHICKAMAUGA-CHATTANOOGA NATIONAL MILITARY PARK.

THIS NATIONAL MILITARY PARK COMMEMORATES THE SITE FOR THE BATTLE OF CHICKAMAUGA WHICH BEGAN IN SEPTEMBER, 1863, AND EVENTUALLY LED TO A SIGNIFICANT DEFEAT OF THE UNION FORCES OVER A TWO-DAY PERIOD. IN THIS ORIGINAL BATTLE, THE CONFEDERATE FORCES OVERWHELMED THE UNION ARMIES AND THE INDICISIVE GENERAL ROSECRANS ORDERED A RETREAT BACK TO CHATTANOOGA. IN CHATTANOOGA HIS TROOPS SPENT A LONG, COLD WINTER BEFORE BEING REINFORCED BY GENERAL SHERMAN AND WE ALL KNOW THE OUTCOME OF SHERMAN'S "MARCH TO THE SEA".

THE SECOND BATTLE OF CHICKAMAUGA BEGAN IN 1967 WHEN THE GEORGIA DEPARTMENT OF TRANSPORTATION, BECAUSE OF ITS GROWING CONCERN OVER TRAFFIC SAFETY AND CONGESTION, PROPOSED THE WIDENING OF U.S. 27 FROM A TWO-LANE FACILITY TO A 4-LANE FACILITY THROUGH THE PARK. ALTHOUGH THIS SECOND BATTLE HAS BEEN LESS BLOODY, IT HAS LASTED MUCH LONGER AND HAS CAUSED

THE LOCAL CITIZENRY ONLY SLIGHTLY LESS INCONVENIENCE THAN THE FIRST. IN TRUTH, WE DO NOT FEEL THAT THIS IS EVEN A BATTLE IN THE TRADITIONAL SENSE, NOR THAT THERE NEEDS TO BE DEFEAT, FOR WE HAVE ALWAYS FELT THE STATE AND THE FEDERAL GOVERNMENTS COULD WORK TOGETHER FOR RESOLUTION OF THIS PROBLEM TO THE BENEFIT OF BOTH THE PARK AND THE LOCAL CITIZENRY.

BRIEFLY, LET ME GIVE YOU SOME BACKGROUND INFORMATION ON THE SITUATION. THE CHICKAMAUGA-CHATTANOOGA NATIONAL MILITARY PARK IS APPROXIMATELY THREE MILES SOUTH OF CHATTANOOGA, TENNESSEE IN THE NORTHWEST CORNER OF OUR STATE. IT IS COMPRISED OF SOME 17 SEPARATE AREAS SCATTERED ABOUT THE CHATTANOOGA METROPOLITAN AREA TOTALLING MORE THAN 8,000 ACRES. THE CHICKAMAUGA BATTLEFIELD SITE, WHICH WE ARE DISCUSSING, ENCOMPASSES SOME 5,000 ACRES OF THIS TOTAL.

PRIMARY ACCESS TO THE PARK, AS WELL AS THE PRIMARY NORTH-SOUTH TRAFFIC ARTERY IN THIS PART OF GEORGIA, IS U.S. 27. THIS HIGHWAY FACILITY NOT ONLY PROVIDES ACCESS TO THE BATTLEFIELD BUT IT IS ALSO A ROUTE WHICH EXTENDS FROM NORTHERN MICHIGAN TO MIAMI, FLORIDA. THE SECTION OF U.S. 27 WHICH TRAVERSES THE BATTLEFIELD CARRIES SOME 15,000 VEHICLES A DAY ON TWO LANES OF PAVEMENT. THE TRAFFIC INCLUDES BOTH THRU-TRAFFIC AS WELL AS TRAFFIC VISITING THE BATTLEFIELD. TRAFFIC PROBLEMS ARE CREATED NOT ONLY BY THE VOLUME OF TRAFFIC BUT ALSO BY THE MIX OF SLOW, SIGHTSEEING TRAFFIC WITH HIGHER SPEED THRU-TRAFFIC.

U.S. 27 IN NORTHWEST GEORGIA CARRIES A HEAVY LOAD OF COMMUTER TRAFFIC IN THE CHATTANOOGA AREA. OVER THE YEARS THE DEPARTMENT HAS BEEN ADDING LANES TO U.S. 27. WE NOW HAVE COMPLETED OR HAVE UNDER CONSTRUCTION SOME 12 MILES OF U.S. 27 SOUTH OF THE PARK AND ABOUT 3 MILES NORTH OF THE PARK. THE ROUTE THROUGH THE PARK WILL SHORTLY BE THE ONLY PORTION OF 2-LANE ROAD IN OVER 15 MILES OF FOUR LANE ROAD.

FOLLOWING OUR 1967 STUDY OF TRAFFIC NEEDS IN THE CORRIDOR, THE DEPARTMENT PROPOSED TO WIDEN U.S. 27 THROUGH THE PARK AND PROPOSED TO PAY THE ENTIRE COST OF THAT PROJECT. THE PARK SERVICE DISAGREED WITH THE WIDENING AND A COMPROMISE TO BYPASS THE VISITATION SITES USING AN ALIGNMENT ON THE WESTERN SIDE OF THE PARK WAS AGREED UPON. THE STATE AND THE NATIONAL PARK SERVICE REACHED A FINANCIAL AGREEMENT TO FUND THE COST OVER AND ABOVE THAT REQUIRED TO FOUR LANE U.S. 27 THROUGH THE BATTLEFIELD. ALTHOUGH PLANS WERE PRODUCED, APPROVED BY THE NATIONAL PARK SERVICE AND SOME WORK ACTUALLY BEGUN, THE ALIGNMENT WAS NEVER CONSTRUCTED.

SUBSEQUENT LEGISLATION ON THE FEDERAL LEVEL DICTATED A RESTUDY OF SOLUTIONS TO THE TRAFFIC CONGESTION PROBLEM. FOLLOWING THE REQUIREMENTS OF THE FEDERAL LEGISLATION, A DRAFT ENVIRONMENTAL IMPACT STATEMENT WAS PRODUCED AFTER STUDYING TEN POSSIBLE ALIGNMENTS FOR THE PROJECT.

ONCE AGAIN THE DEPARTMENT EXPRESSED ITS OPINION THAT THE ONLY PRUDENT AND FEASIBLE ALTERNATIVE WAS WIDENING THE EXISTING FACILITY IN A SENSITIVE MANNER THROUGH THE PARK. THE NATIONAL PARK SERVICE, HOWEVER, NOW MAINTAINS THAT ONLY AN ALIGNMENT OUTSIDE OF THE PARK WILL BE ACCEPTABLE. THE DEPARTMENT'S PROPOSED WIDENING THROUGH THE PARK WOULD INVOLVE SOME 30 FEET OF ADDITIONAL RIGHT-OF-WAY ALONG THE 3.32 MILE ROUTE, TOTALING SOME 11.7 ACRES. THE WESTERN ALIGNMENT PROPOSED BY THE PARK SERVICE WOULD USE MORE THAN 100 ACRES OF NEW LAND FROM THE PRIVATE SECTOR OR FROM THE PARK. THE WESTERN ALIGNMENT WOULD BE ABOUT THREE MILES LONGER THAN THE EXISTING - INCREASING COSTS TO DRIVERS AND WITH NO ASSURANCE THAT THE THRU TRAFFIC COULD BE REROUTED ONTO THE LONGER ROAD.

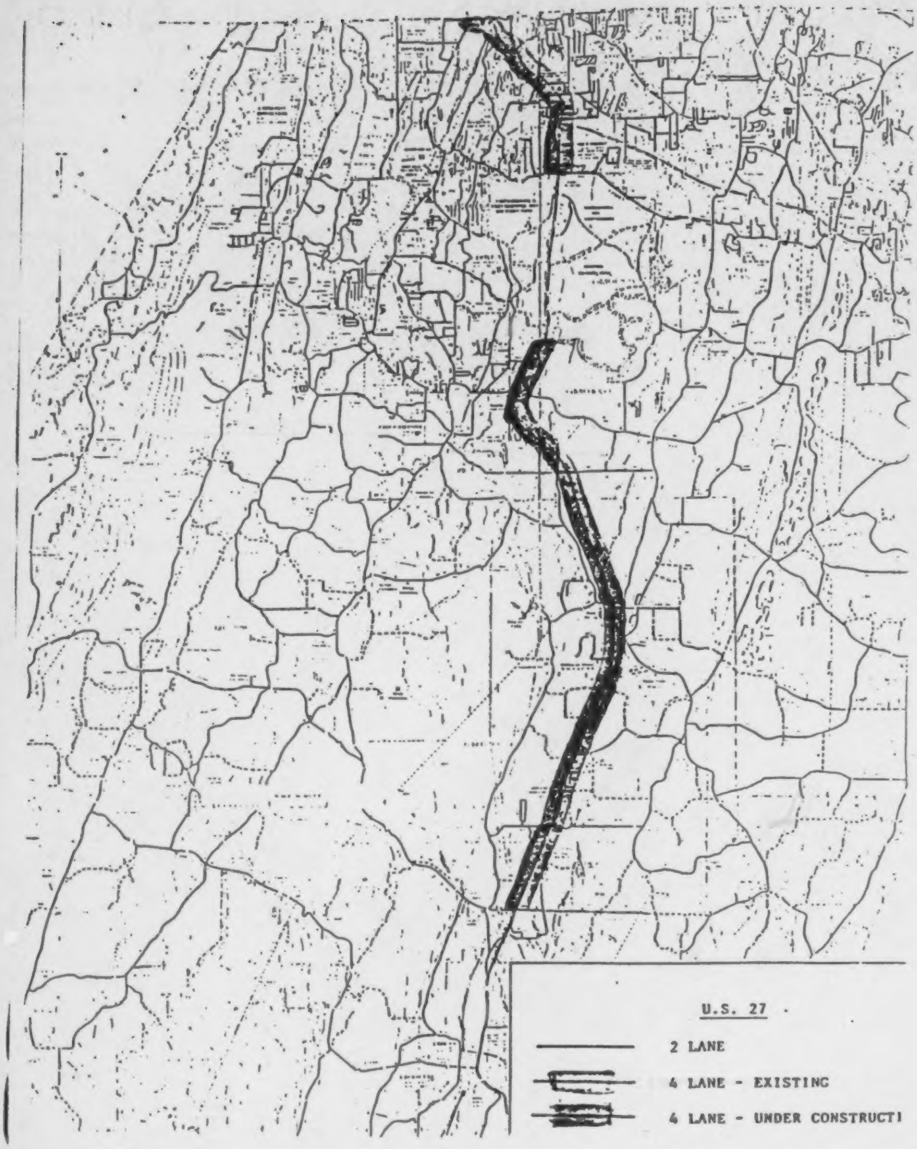
THE FEDERAL HIGHWAY ADMINISTATION (FHWA) HAS WORKED ON A PROJECT MEETING THE PARK SERVICES' REQUIREMENTS. THE ESTIMATED COST OF CONSTRUCTING THE FHWA'S ALIGNMENT FOR A FOUR LANE, DIVIDED RURAL HIGHWAY WITH A 44-FOOT MEDIAN IS SOME $29 MILLION. IT IS CURRENTLY ESTIMATED THAT SOME 24 HOMES AND TWO TRAILERS WILL BE TAKEN IN THE RIGHT-OF-WAY ACQUISITION REQUIRING THAT THE RESIDENTS BE RELOCATED. THIS ALIGNMENT DOES UNNECESSARY HARM TO GEORGIA RESIDENTS, BUSINESSES AND PROPERTY, REMOVING THIS LAND FROM THE TAX BASE FOREVER. THIS PRESENTS A LIABILITY TO GEORGIA AND TO THE LOCAL GOVERNMENT, AND WE CANNOT IN GOOD CONSCIENCE CONTRIBUTE ADDITIONAL STATE MONIES TO A HARMFUL PROJECT

WHEN THE VIABLE AND LESS HARMFUL ALTERNATIVE OF WIDENING THROUGH THE PARK EXISTS. THE GEORGIA DEPARTMENT OF TRANSPORTATION STANDS READY TO CONTRIBUTE THE COST OF WIDENING U.S. 27 THROUGH THE PARK, SOME $2.9 MILLION, TO THE PROJECT PROVIDING THE FEDERAL GOVERNMENT - USING FEDERAL FUNDS OTHER THAN GEORGIA'S FEDERAL-AID HIGHWAY MONIES - WILL FUND THE REMAINDER.

CONGRESSMAN DARDEN'S BILL, HR 2121, IS DESIGNED TO AUTHORIZE THE DEPARTMENT OF INTERIOR TO PROVIDE 90% OF THE NECESSARY FUNDING FOR THE PROJECT (GEORGIA DEPARTMENT OF TRANSPORTATION WOULD PAY REMAINING 10%, $2.9 MILLION). THE CONGRESSMAN'S PROPOSAL WOULD LIMIT FEDERAL FUNDS TO SOME $35 MILLION TO ALLOW FOR NECESSARY ADJUSTMENTS WITH FINAL ENGINEERING. IN ADDITION, HR 2121 WOULD ALLOW THE NATIONAL PARK SERVICE TO CONTINUE TO REVIEW ITS OPPOSITION TO THE WIDENING OF U.S. 27 AND IF IT WISHED TO RECONSIDER ITS DECISION TO DO SO.

OVER THE PAST 20 YEARS, GEORGIA DEPARTMENT OF TRANSPORTATION HAS SOUGHT TO IMPROVE TRAFFIC SAFETY AND REDUCE CONGESTION ON U.S. 27 THROUGH THE CHICKAMAUGA-CHATTANOOGA NATIONAL MILITARY PARK. WE HAVE DONE EXTENSIVE STUDIES AND MADE A VERY SENSITIVE PROPOSAL OF MODEST COST TO IMPROVE THE EXISTING LOCATION OF U.S. 27. WE HAVE BEEN THWARTED IN EVERY ATTEMPT TO MOVE FORWARD BY THE FEDERAL INTEREST, AND I WISH TO SUPPORT CONGRESSMAN DARDEN'S ATTEMPT TO BRING A RESOLUTION TO THIS MOST SERIOUS PROBLEM.

I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY, AND I WOULD BE GLAD TO ANSWER ANY QUESTIONS.


U.S. 27
2 LANE
4 LANE - EXISTING
4 LANE - UNDER CONSTRUCTI

Senator FOWLER. Thank you, Mr. Rives.

Mr. Craig, Cultural Resources Coordinator for the National Parks and Conservation Association.

STATEMENT OF BRUCE CRAIG, CULTURAL RESOURCES COORDINATOR, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. CRAIG. Thank you, Mr. Chairman.

I had two goals here today essentially. One was to deliver my testimony before the little red light came on, but now that we don't have the little red light to have to deal with.

Senator FOWLER. I have a little red light in my mind. So, I appreciate your making a couple of good points either in response or support because we do have another panel waiting.

Mr. CRAIG. Yes.

NPCA appreciates the opportunity to testify today on H.R. 2121. We wish that we could have spoken on behalf of all three bills that we do support. Our comments on 1983 will be forthcoming.

We support the enactment of 2121 as passed by the House. We believe that it will reduce the long-term damage to natural and historic resources, enhance the visitor understanding of the battlefield's historic scene, and improve the highway safety from within the park.

It was here in the autumn of 1863 that the road was central to the battle plans of both Union and Confederate commanders. According to historians, the road is the single most important feature associated with the battle. And we believe this road should be preserved, and it should be interpreted to park visitors as a two-lane country road. A relocation would preserve the historic nature of this two-lane road, reduce traffic, and eliminate safety hazards, thereby enhancing the historic scene.

We support the desire of the Department of Transportation to improve the State's transportation system. We feel, however, that the 75-25 cost share is appropriate and reasonable.

Our overriding concern, though, is that the historic integrity of a two-lane road must be maintained, if not restored, for the benefit of the thousands of people from all States who come and visit this park.

We note that the legislation does not designate the specific funding source for the project. However, we feel that because this 3.7 mile portion of the road is owned, maintained and patrolled by the National Park Service, grant monies for the relocation should be provided by a special appropriation from Congress.

We believe that H.R. 2121 satisfies the need for an improved transportation system for commuters and commuter traffic, preserves the historic integrity of the two-lane country road, and enhances the historic scene for park visitors.

Mr. Chairman, that concludes my testimony. I'll be glad to answer any questions you may have.

[The prepared statement of Mr. Craig follows:]

STATEMENT OF BRUCE CRAIG
CULTURAL RESOURCES COORDINATOR
NATIONAL PARKS AND CONSERVATION ASSOCIATION

Before the
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS
AND FORESTS

SEPTEMBER 29, 1987

My name is Bruce Craig, Cultural Resources Coordinator for the National Parks and Conservation Association, a nonprofit membership organization founded 68 years ago. Through our organization's diverse activities, we seek to promote the preservation, protection and public understanding of our nation's National Park System.

Our Association appreciates the opportunity to testify on H.R. 2121, legislation which authorizes the Secretary of the Interior to provide a grant of not more than $30,000,000 to the State of Georgia for the purpose of relocating the 3.7 mile section of U.S. Highway 27 which passes through the Chickamaunga and Chattanooga National Military Park.

We support enactment of H.R. 2121. The relocation would reduce long-term damage to natural and historic resources, enhance visitor understanding of the battlefield's historic scene and improve highway safety within the park. Designated in 1895, Chickamaunga and Chattanooga is this nation's first National Military Park. It contains nearly the entire field of battle, some 8000 acres, and is the largest and in many ways the most inclusive of all the Civil War parks. It contains over 50 miles of roads including the historic two-lane LaFayette-Chattanooga Road---U.S. Highway 27. In the autumn of 1863, this road was central to the battle plans of both union and confederate commanders. According to historians, the road is the single most important feature associated with the battle. We believe this road should be preserved and interpreted to park visitors as a two-lane country road. A relocation would preserve the historic two-lane road, reduce traffic and thereby enhance the historic scene.

The legislation as introduced in the House included a section that would have allowed the widening of the existing road which would mar the historic scene and destroy the historic integrity of this two-lane road. For over thirty years the Georgia Department of Transportation (DOT) has sought to widen Highway 27. We support the desire of the DOT to improve the state's transportation system; the traffic and congestion created by the 14,000 commuters and 800 commercial vehicles which travel this narrow roadway each day does not enhance the visitor experience. However, we believe the historic integrity of the two-lane road must be maintained for the benefit of thousands of people from all states who visit this park.

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A widened highway would not only mar the historic scene and destroy the historic integrity of the LaFayette-Chattanooga Road, but also would create additional safety hazards for park visitors. Georgia DOT transportation studies indicate that an enlarged four-lane speedway would increase traffic on the highway by 30%. This increased traffic combined with a higher speed limit would create several hazardous highway crossings for those traveling the battle-road tour.

First, after visitors leave the Visitor Center and have made the first stop on the seven mile auto tour (stop one is on Highway 27), they would have several seconds to travel approximately 150 yards and cross two lanes of southbound traffic in order to turn left, then cross in front of northbound traffic to proceed onto tour-stop two. Visitors would then cross the highway completely between tour-stop two and three; they would have to dodge four lanes of traffic or a traffic underpass or overpass would have to be constructed. Once visitors complete stops four and five which are on U.S. 27, they would once again dodge traffic as they make their way from stop five to stop six. Finally, to finish the tour, visitors would cross two lanes of southbound traffic once again to turn left onto the highway, only to make another left hand turn against traffic in order to reach the museum parking lot. Today, some 17 million people travel this road with approximately 50 accidents per year. If the highway were widened, and speed limits raised the highway would become even more dangerous, and perhaps significantly more dangerous.

We note that the legislation does not designate the funding source for the project. However, we feel that because this 3.7 portion of road is owned, maintained and patrolled by the National Park Service, grant monies for the relocation should be provided by special appropriation from Congress.

We believe that H.R. 2121 satisfies the need for an improved transportation system for commuters and commercial traffic, preserves the historic integrity of the two-lane country road and enhances the historic scene for park visitors.

Mr Chairman, that concludes my testimony. I will be happy to answer any questions you may have.

Senator FOWLER. Thank you, Mr. Craig, for your testimony and your brevity.

I realize that, Mr. Rives, as you unmistakably and in your inimitable words said that you consider the decision of the Park Service ill-considered, I believe you said, and ill-conceived. But just so the record will be clear, that has been the position of the Park Service for at least 20 years and through three, four, five or six directors of the park. Is that not correct?

Mr. RIVES. That's correct. At one time, though, back in 1968 and 1969 the National Park Service was willing to accept an alignment to the west to stay within the park which did not take private lands and did not disrupt homes and disrupt families.

Senator FOWLER. All right. I am not rehashing old ground. The point is that this compromise—and it certainly is a compromise—that is recommended in 2121 is really necessitated by the fact that the Federal Government has said there will be no widening of the road in the park——

Mr. RIVES. Exactly.

Senator FOWLER [continuing]. That the State of Georgia is now coming in and volunteering a 25 percent share of a rerouting of the road in order to accommodate both the Federal Government and to preserve the park.

Mr. RIVES. Correct.

Mr. SNOW. We appreciate the DOT and their efforts in that respect too. And we are in favor of the compromise that is in the legislature. And my constituents, by the way, in northwest Georgia appreciate Buddy's bill.

Senator FOWLER. Well, I know it is hard for us to translate to people who are here, who will look at this just from a map, what an extraordinary traffic jam there is every day. Also, Representative Snow, as you know, it is substantially hampering the expansion of an area that is expanding because people want to live in north Georgia. The pressure is coming from both sides of that park.

Mr. SNOW. We have one of the largest counties in the State.

Senator FOWLER. No question about it.

I will disagree with my friend only to the point—Mr. Rives, only that in light of the problem of preserving the Nation's first national park battlefield and the transportation needs of the State, that it is a good compromise.

And speaking with my Federal hat on, I do appreciate the volunteering of the State to spend this 25 percent of the money, which they are not compelled to do by law. And I hope that they will push the passage of this bill. We do have substantial contributions from the State and local government. It is not an entire request of the Federal Government.

Mr. SNOW. I appreciate those remarks.

Mr. RIVES. Thank you.

Senator FOWLER. Thank you all very, very much for your patience and for your testimony.

Our last panel is on H.R. 1983: Kathleen M. Reinburg, Assistant Washington Representative, Society for American Archaeology in Washington; Lynn Stein, Florida Chapter of the Sierra Club in Tallahassee; Mr. William Peterson, General Manager of the Fairfield Fort George Island, Jacksonville, Florida.

Who is who? I think I can guess who William Peterson is. [Laughter.]

Ms. STEIN. I'm Lynn Stein.

Ms. REINBURG. Kathleen Reinburg.

Senator FOWLER. Good. Nice to see you.

Ms. STEIN. Nice to be here.

Senator FOWLER. Would you like to start, Ms. Reinburg? Summarize to the extent that you can. I'm fine and want to hear it. I know about this bill, but we are expecting a vote at any minute. I know you all don't want to wait another 30 minutes for me to get back.

STATEMENT OF KATHLEEN M. REINBURG, ASSISTANT WASHINGTON REPRESENTATIVE, SOCIETY FOR AMERICAN ARCHAEOLOGY

Ms. REINBURG. You have my written statement. I will just summarize.

Senator FOWLER. It will be part of the record.

Ms. REINBURG. The Society for American Archaeology is pleased to have this opportunity to present the testimony in favor of H.R. 1983, and we would like to applaud the continued support and concern of this committee and especially you, Senator Fowler. I do have a copy of your letter, and I am in the process of addressing the questions that you have asked the Society.

Senator FOWLER. Thank you.

Ms. REINBURG. I am the Assistant Washington Representative of the SAA, and I am an archaeologist. And bills like H.R. 1983 are especially exciting because, first, they protect resources in a cost efficient way. Second, they combine the interests of natural resources and cultural resources. And third, they provide an opportunity for public interpretation and participation.

The sites discussed in H.R. 1983 clearly show us several things: first, the importance of archaeological and historical sites in this area and the high potential for more sites to be found; second, the unique and continuous range of cultural history present in Duval County, Florida, including the prehistoric and historic Native American sites, the French and Spanish, British settlements, missions and forts, the sites from the Revolutionary War, the Civil War and the Spanish American War, truly a cross section of the secular, military and religious life that was going on at the time; and the third, the need for more in-depth research into the potential for more sites.

The problem that we are seeing is that Duval County is one of the fastest growing areas in Florida, and because of this growth, it is endangering not only the wetlands, which are a delicate ecosystem, but also the cultural resources that are available in this ecosystem.

In our written statement, the SAA made several recommendations, and I would like to highlight just several of them, if I might.

Senator FOWLER. All right.

Ms. REINBURG. First, that an in-depth research of survey and archaeological excavation be done to document any evidence of prehistoric or historical culture be done as soon as possible; and second, that the boundaries of the preserve be established only after this survey is completed in order to include as many possible sites or potential sites as is possible; and third, that the important opportunity being offered to preserve and understand a lost culture of the Timucuan Indians, the group that is lending its name to this important preserve, be realized and met.

We need to understand that there are no native Florida Indians left. True, there are Indians in Florida, but they are all immigrants or refugees. The Timucuans were a people who vanished due to the contact with the Spanish, the French and the English colonists.

The interpretive center that Congressman Bennett and the Senators have asked for can provide this opportunity for us to understand this culture better. It can take the historic accounts left by the Spanish missionaries, like Father Francisco de Pareja whose extensive ethno-historical accounts are about the most we have of written record of the Timucuans.

And it can also combine the drawings, the beautiful drawings, left by the French artist LeMoyne who visited this area in 1564 to 1565. I have some examples of these drawings of LeMoyne I would like to submit to the record. These sources can be combined with whatever is available or whatever becomes available from archaeological research to provide an exciting interpretive opportunity for any visitors to the area. It can help us reconstruct what was going on with these people and what happened to them.

And let me just conclude by saying that the SAA supports H.R. 1983. It is exciting and challenging and allows us to address site preservation, research and interpretation by combining the interests and efforts of cultural resources and natural resources.

Thank you.

[The prepared statement of Ms. Reinburg follows:]

SOCIETY FOR AMERICAN ARCHAEOLOGY
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Statement of the Society for American Archaeology Before the Senate Energy & Public Works Committee Subcommittee on Public Lands, National Parks & Forests

September 29, 1987

Mr. Chairman, the Society for American Archaeology is pleased to have the opportunity to present this testimony.

The Society wishes to applaud the continued concern and support shown by Members of this committee for our country's cultural resources.

PROVISIONS OF H.R. 1983

H.R. 1983 would would expand the administrative and interpretive functions of the existing Fort Caroline National Memorial and establish the Timucuan Ecological and Historic Preserve. In addition, Section 202 of the bill provides for acquisition of specific sites of historic interest in Duval County, Fla., to be administered in conjunction with Fort Caroline. Following is a description and brief analysis of the sites:

o The Spanish American War fortification at Saint Johns Bluff is a single battery military structure from the Spanish American War. It is believed to be the only remaining example of a "stand alone" battery in existance today. This is an excellent example of the smallest element of the coastal defenses from the Spanish American War. The National Park Service has no examples of this type of isolated single battery and experts believe that no other examples remain.

o The Kingsley Plantation, Fort George Island, is owned by the State of Florida and administered as a state historical park. It is on the National Register of Historic Places and is considered a very significant site. The plantation buildings are from the second period Spanish colonial period, dating from the 1790's, and are the only standing examples of such architecture in Florida today.

o Thomas Creek was the site of a minor skirmish during the American Revolutionary War between British and Colonial militia. It has the potential to be nationally significant, as the southern most engagement of the American Revolution, but at present, no documented or archaeological evidence is available on the exact location. Further research is needed to precisely locate this site.

o The mission of San Juan del Puerto, Ft. George Island, is a National Register site. Settled around 1587, the mission is significant as a link in the chain of 16th and 17th Century Spanish missions which stretched up the eastern coast into Georgia. In the 1590's Francisco de Pareja, a missionary, produced extensive ethnohistorical studies on the language and culture of the Timucaun Indians, the indigenous people of contact period Florida. His work forms the bulk of the knowledge of early contact Timucauns.

o The other forts cited in H.R. 1983 are not specifically documented but each has high potential for national significance. The 18th Century English fort on Ft. George Island was the reported site of Governor Oglethorpe's attempt to annex sections of Florida for the Georgia colony, yet there are conflicting reports even in Oglethorpe's papers as to the exact location of the fort, and no archaeological evidence of its location on Ft. George Island. The St. Johns Bluff British fort has no standing structures and has not yet been specifically documented. The 18th Century Spanish fort of Dos Hermanas was reported to have been one of the Spanish defenses against United States expansion into Florida. Experts question its location. The sites of San Gabriel and San Estaban, Spanish forts thought to have been part of the northern defense of St. Augustine. Currently, however, there is no documented evidence of these forts.

FURTHER RESEARCH IS NEEDED

Clearly, this description shows the importance of archaeological and historical sites to be found in the proposed preserve area. Duval County, Florida offers a unique and continuous lesson in the cultural history of our country. Evidence and remains from Spanish missions and forts, British forts, American Revolutionary War, Civil War and Spanish American War sites, prehistoric and historic Native American sites, plantations, and early French settlements are abundant. Yet relatively little archaeological work has been done; there is a high probability of many more important archaeological and historical sites. With increasing commercial development it is important to find, document, and preserve these sites in the most cost effective and efficient manner possible. Establishment of an ecological and historical preserve annexed to an existing National Park System unit seems to be a good way to meet these needs.

This area of Florida is now one of the biggest growth areas in the state. The delicate and beautiful marshlands are becoming endangered due to development. As a result, efforts have and should be made to protect not just the archaeological and historical remains of the past but also to ensure the future of this ecosystem and all of the unique species that it houses.

RECOMMENDATIONS

The Society would like to offer the following recommendations concerning H.R. 1983:

(1) An indepth examination be made of the proposed ecological preserve, including archaeological field surveys and historic document research to investigate evidence of Timucuan culture and other historic sites.

(2) The boundaries of the Timucuan Ecological and Historic Preserve be established after completion of the above survey, to ensure that all significant archaeological and cultural sites are included in the preserve.

(3) An intensive program of survey, excavation, evaluation and documentation of the cultural resources of interest in Duval County be performed by the appropriate state agency or university.

(4) The existing resources at Fort Caroline National Memorial be expanded to include any relevant prehistoric materials and materials from the early St. Johnstown settlement.

(5) The interpretive center at Fort Caroline National Memorial be used to explain the cultural history of Duval county, including the unique role of the sites outlined in this bill.

(6) The ecological and historic preserve in the St. Johns River Valley should be developed, as proposed in the bill. The Society for American Archaeology strongly supports this proposal. The Timucuan Preserve offers the excellent opportunity to bring to life the culture of the extinct Timucuan Indians -- a culture which vanished due to contact with Spanish and English. Tragically, there are no longer any native Florida Indians. There are indeed Indians in Florida but they are refugees, immigrants.

The interpretive center can make use of use the existing drawings of the French artist LeMoyne. These are the best documentation of the lost Timucuan culture. These drawings, teamed with the written historical accounts from sources like Father Pareja, will provide an excellent interpretive and analytical tool. So few Timucuan sites exist that any archaeologically recovered resources resulting from the preserve survey would be a bonus.

The expansion of the existing administrative and interpretive facilities of Fort Caroline is an excellent faclity to offer public education and interpretation of this extinct Florida tribe and understanding the relationships of natural and cultural resource protection.

CONCLUSION

The Society for American Archaeology feels that H.R. 1983 offers an exciting and challenging opportunity to address site preservation, research, and interpretation in an economical way through merging the interests and efforts of cultural and natural resources.

Thank you for this opportunity to present testimony.

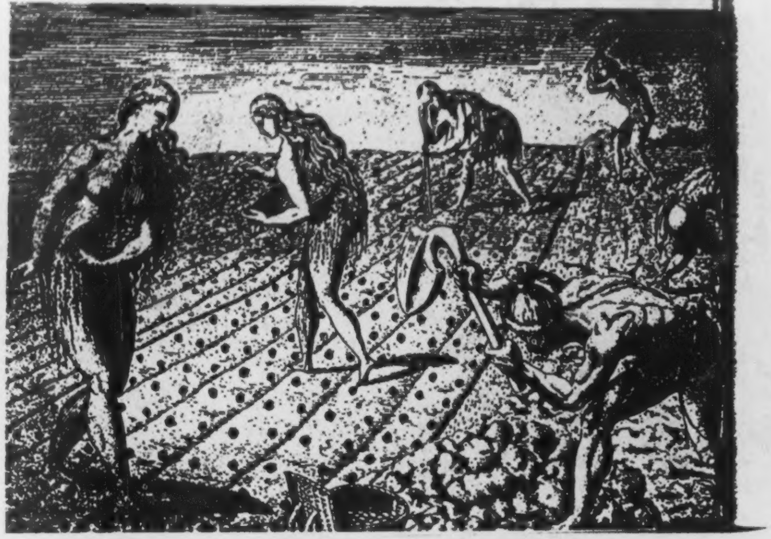
HISTORIC PERIOD

Plates 11 and 12

"Du Pratz tells us that the Natchez prepared their fields for planting by means of a curved mattock made of hickory, but shoulder blades of the bison were observed among the neighboring Bayogoula. . . ." (Swanton, 1946, p. 310).

"In the first clearing of their plantations, they only bark the large timber, cut down the sapplings and underwood, and burn them in heaps; as the suckers shoot up, they chop them off close to the stump, of which they make fires to deaden the roots, till in time they decay." (James Adair, 1775, 405-406).

BELOW. "Mode of tilling and planting." From an engraving by De Bry, after a drawing by Le Moyne, who visited Florida in 1564-65. Timucua Tribe, (BAE, 1186-B-1). "For Timucua agricultural methods, we have two parallel narratives, . . . Rene de Laudonniere: 'They sow their maize twice a year — to wit in March and in June—and all in one and the same soil. The said maize, from the time that it is sowed until the time that it be ready to be gathered, is but three months on the ground; . . . when they sow they set weeds on fire . . . and burn them all. They dig their ground with an instrument of wood, which is fashioned like a broad mattock . . . . they put two grains of maize together . . . . At the time when the maize is gathered, it is all carried into a common house, where it is distributed to every man, according to his quality. They sow no more but that which they think will serve their turn for six months . . . . (Laudonniere, 1856, pp. 11-12; Swanton, 1922, p. 359). Le Moyne: 'The Indians cultivate the earth diligently; and the men know how to make a kind of hoe from fish bones, which they fit to wooden handles, and with these they prepare the land well enough, as the soil is light. When the ground is sufficiently broken up and levelled, the women come with beans and millet, or maize. Some go first with a stick, and make holes, in which the others place the beans, or grains of maize. After planting they leave the fields alone, as the winter in that country . . . is pretty cold for about three months . . . ; and during that time, as they go naked, they shelter themselves in the woods. When the winter is over, they return to their homes to wait for the *crops to ripen. After gathering in* their harvest, they store the whole of it for the year's use, not employing any part of it in trade, unless, perhaps some barter is made for some little household article.' " (Le Moyne, 1875, p. 9, illus.; Swanton, 1922, p. 359 and 1946, pp. 308-390). Agriculture provided a relatively secure livelihood and leisure time for craftsmanship.



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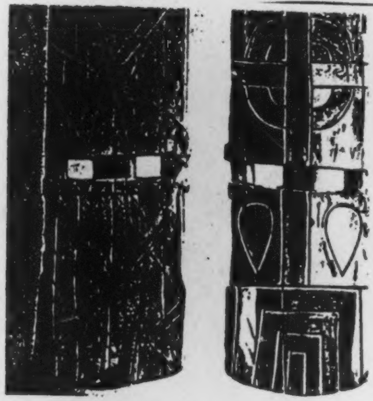
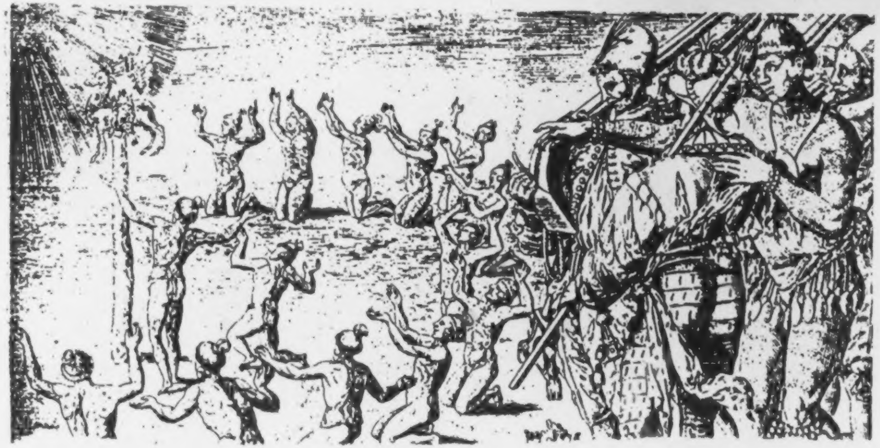
PREHISTORIC, PROTOHISTORIC, AND HISTORIC DESIGNS FLORIDA

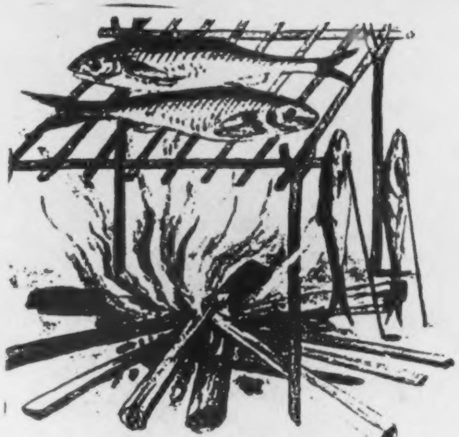
Plates 61 and 62

RIGHT. Wooden ceremonial slab. Obverse and reverse sides. Southern Florida. (Courtesy, Smithsonian Institution; Miscellaneous Collections, Vol. 80, No. 9, Pl. 2. USNM 329,599). This is Fig. 1 on the opposite page. Two crudely similar objects are reported from the Thomas Mound, Hillsborough Co., Fla. (Florida Geological Survey Museum). One is of copper (4.5 cm. high x 2.8 cm. wide); the other, of silver. These are described by Goggin (1947) and pictured in outline by Willey (1949, pp. 124-125).

BELOW. From an engraving by De Bry, after a drawing by Le Moyne, who visited Florida in 1564-65. Timucua Tribe. It pictures natives making an offering to the sun. The painter explained that the natives stuffed the skin of a deer with edible roots, decked it with garlands of fresh fruits, and placed it on top of a tree in a position in which it faced the rising sun. The chief and medicine man are near the pole and the other natives are around; they are imploring the sun to give them the foods of field and forest abundantly in the coming year, as they offer in abundance here. The natives are showing the scene to the Frenchmen. Note: body painting, the shell plummets? on the waist girdle and the beads around the knee. (Photograph from book in Rare Book Room, New York Public Library.



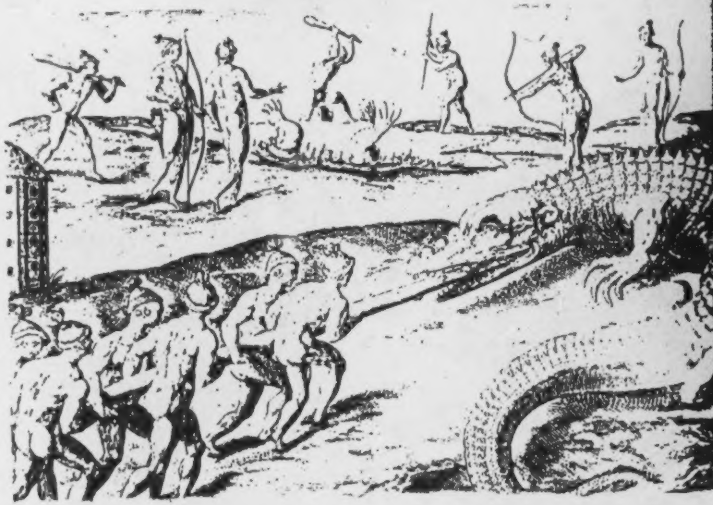




N. Carolina. Southern Algonquians (Courtesy, Smithsonian Institution, BAE, 44,479-C).

LEFT. FAR. "The broyling of their fish over the flame of fier." From a water color by John White, 1587, in the coastal region of present N. Carolina Southern Algonquians (Courtesy, Smithsonian Institution, BAE 18,730). NEAR. Wooden mortar and pestle. Chitimacha tribe (Courtesy, Smithsonian Institution, BAE, 1182-c; BAE Bull. 43, Pl. 21).

BELOW. "Killing an alligator." Timucua. After De Bry; after Le Moyne (Courtesy, Smithsonian Institution, BAE, 44-534-A).



"They put up, near a river, a little hut full of cracks and holes, and in this they station a watchman, so that they can see the crocodiles (or alligators) and hear them a good way off; for, when driven by hunger, they come out of the rivers and crawl about on the islands after prey, and if they find none, they make . . . a frightful noise. . . . Then the watchman calls the rest of the watch . . . . and taking a portion, ten to twelve feet long, of the stem of a tree, they go out to find the monster, who is crawling along with his mouth wide open . . . . with great quickness they push the pole, small end first, as deep as possible down his throat, so that the roughness and irregularity of the bark may hold it from being got out again. Then they turn the crocodile over on his back, and with clubs and arrows pound and pierce his belly, which is softer. . . . (Le Moyne, 1875, p. 10 (illus.); pl. 26. Swanton, 1922, p. 358. Swanton, 1946, p. 332).

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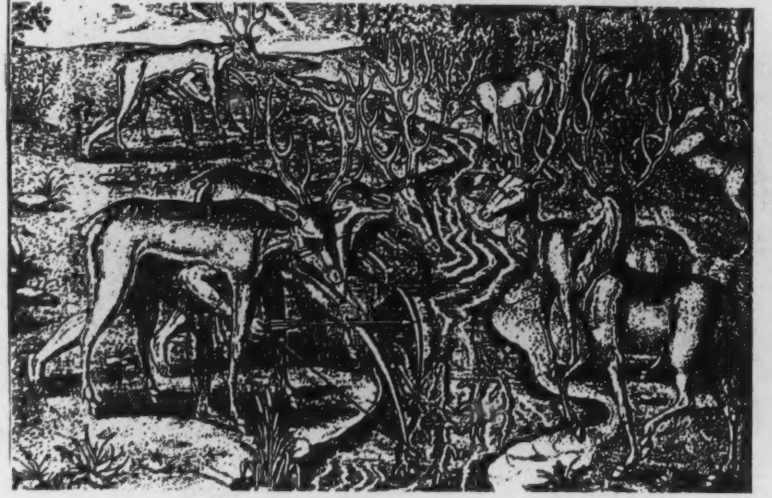
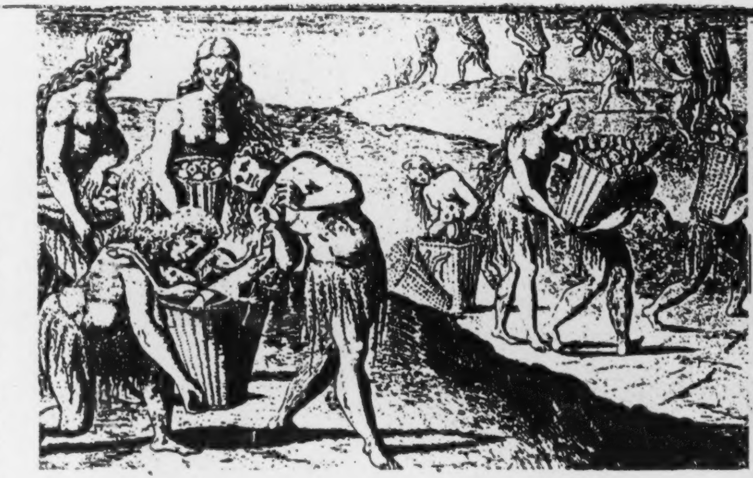


ABOVE. Indians hunting deer with decoys made of the skin and head of deer. From an engraving by De Bry after a drawing by Le Moyne, who visited Florida in 1564-65. Timucua tribe (Courtesy, Smithsonian Institution, BAE, 44-479).

LEFT. "The Indians have a way of hunting deer which we never saw before. They manage to put on the skins of the largest which have been taken, in such a manner, with the heads on their own heads, so that they can see out through the eyes as through a mask. Thus accoutered they can approach close to the deer without frightening them. They take advantage of the time when the animals come to drink at the river, and, having their bow and arrows all ready, easily shoot them, as they are very plentiful in those regions. (Le Moyne, 1875, p. 10 (illus.); Swanton, 1922, p. 357; Swanton, 1946, p. 313). "Deer stalking is described by our authorities as observed among the Powhatan Indians, the Siouan tribes, the Chickasaw and Choctaw, the Timucua, and the Natchez." (Swanton, 1946, pp. 312-321).

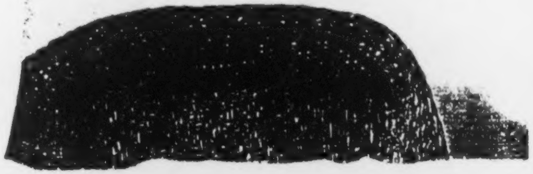
BASKETS — COILING AND WEAVING

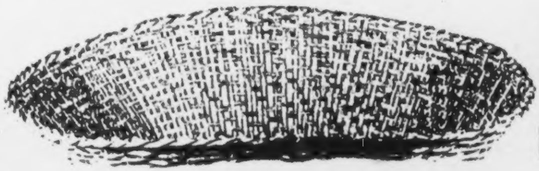
Plates 131 and 132



RIGHT. Laborers with their baskets and harvest. From an engraving by De Bry after a drawing by Le Moyne, who visited Florida in 1564-65. Timucua tribe. Some of the natives have a tump line around their forehead for holding the load.

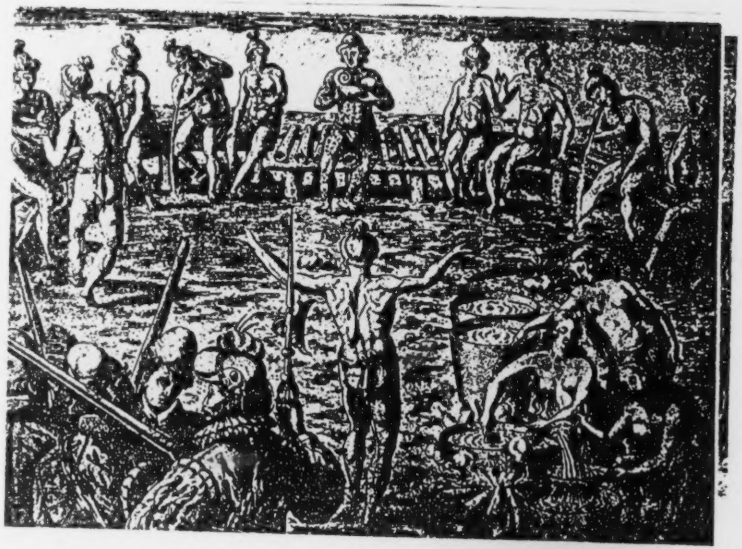
BELOW. UPPER ROW. LEFT. Twilled splint baskets said to have been used in a game. Similar shallow baskets were frequently used as containers, and the very shallow baskets for winnowing grain. Cherokee. Qualla Reservation, North Carolina (Courtesy, University Museum, University of Pennsylvania, 46-695 a). RIGHT. "Burden basket made of split cane in twilled weave on a square bottom; the sides round with the growth of the basket; halfway, it begins to flare; top is finished with oversewing and turned down warp; no ornamentation. The squaw from whom it was bought refused to part with the much worn carrying strap; neither a new one nor money to buy several new ones tempted her—she always answered, 'You take your money and buy you a new one.' Diameter at bottom 9½"; at top 20"; height 16"; 16 warp to inch. Choctaw. Muskhogean family. Heidelberg, Mississippi." (Courtesy, Lauren Rogers Library and Museum of Art; photograph by Jack Lynch). LOWER ROW. Left. "Shallow basket made of cane, twilled, and on the usual square or rectangular bottom; on the sides, yellow and black canes are brought into the weave; 3½" high; sides, 12" x 12¾"; 7 warp to inch. Choctaw. Louisiana." Center. "Basket of very rare weave made of small, smooth willow splints and cane brake splints; bottom is square; warp splints are placed side by side in groups of four or five and held by single woof (weft) splints; at the sides all the warps are grouped in fours or fives and held flat by the woof strands of willow and cane dyed (vegetable dyes) red, green and yellow; border has an oversewing of cane, the warp being bent under the stitches. Diameter at top, 10¼"; at bottom, 6"; height, 5". Choctaw. Rankin County, Mississippi." Right. "Round basket made of cane splints, twilled weave, on a square base and rounding on the sides; a few yellow and brown (possibly black originally) splints form a crossing on each side. This is a very rare specimen since it is woven double and this tribe, nearly always, wove single elements. About 100 years old. Diameter, 12"; height, 6". 6 canes to inch. Jones County, Mississippi." (Courtesy, Lauren Rogers Library and Museum of Art; photograph by Jack Lynch). Cane appears to have been the favorite Southeastern basket material.

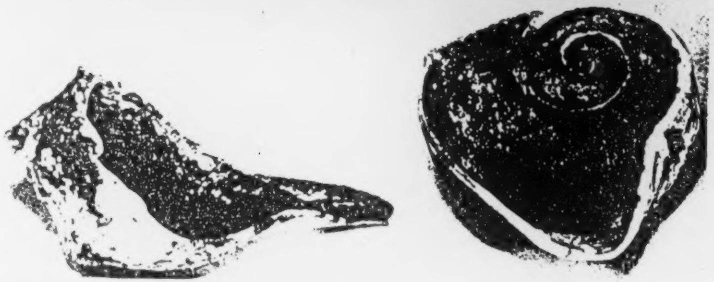




SHELL IMPLEMENTS

Plate 154





RIGHT. UPPER. Timucua council meeting. East coast of Florida. After an engraving by De Bry from a painting by Le Moyne, who visited Florida in 1564-65. According to Le Moyne the chief called together special men of the tribe for council during which they drank warm 'casina' from shell cups which a cupbearer passed around; he wrote that the natives took gourds full of 'casina' on journeys which were to last several days, because it gave them strength and assuaged their hunger. In the engraving, women making the drink strain it through a basket strainer to remove the parched leaves. A religious leader is envoking a blessing; Frenchmen watch (Rare Book collection, New York Public Library). LOWER. Two conch shell vessels found with burials. Limestone County, Alabama (Courtesy, Dr. F. J. Soday).

The "black drink" ceremony is mentioned by many colonial period writers. Lewis and Kneberg (1954, p. 68) summarize:

"The most famous beverage of the Southeastern Indians was a strong black tea which they called the 'white drink' but which British traders named the 'black drink.' The Creek Indians called it 'asi,' short for 'asi-luputski' which meant 'little leaves.'

"It was made from the leaves of a shrub belonging to the holly family that grows in the southern states near the coast. The leaves were roasted in a pot and then boiled in water. The almost black tea was poured . . . from one pot to another until a white froth formed . . . .

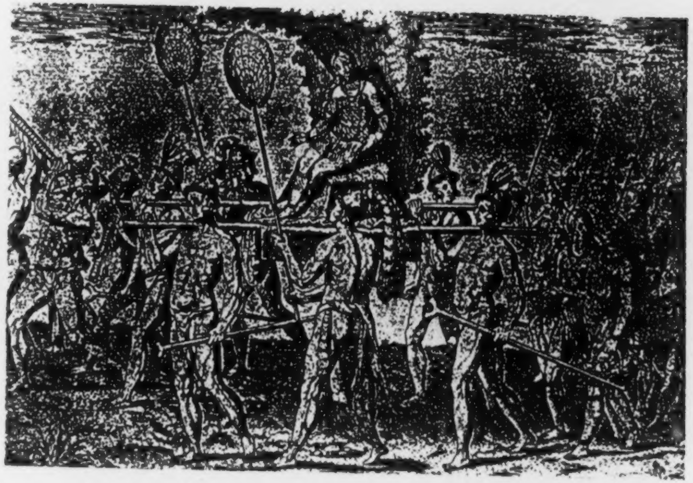
"It was supposed to purify the mind and enable the drinker to think more clearly. Although it was a purgative and stimulated the kidneys, its most important effect in the eyes of the Indians was to cause vomiting. It contained enough caffeine to give the some effect as an equal amount of strong black coffee.

"It was customary for all men to meet at least once a week (in some towns every [illegible]ing) and drin[illegible] having any food. Women were [illegible] to taste [illegible]

"The

FEATHER ORNAMENTS

Plates 159 and 160



RIGHT. "The display with which a queen elect is brought to the king." Timucua tribe. From an engraving by De Bry, after a drawing by Le Moyne, who visited Florida in 1564-65 (Courtesy, Smithsonian Institution, BAE, 1186-b-14. Swanton, BAE, Bull. 137, Pl. 85). Her body is painted with a step-dot design, and she wears pearl or shell beads; the accompanying maidens and the queen-elect wear skirts made of Spanish moss. The bride-elect is seated on a beautifully decorated animal skin, and shaded by a canopy of boughs and two large feather fans carried by men at each side of the litter; they wear animal skins around their waist and tails dangling from the hair-knot; the knots may be similar in style to those depicted on the stone and pottery images found in other parts of the Southeast. The procession is lead by trumpeters and four guards line the rear. Each of the litter bearers carries a forked stick upon which to rest the litter poles when the procession stops.

"When the chief took a wife, Le Moyne tells us, she was brought in a litter preceded by men 'blowing upon trumpets made of bark, which are smaller above and larger at the farther end and having only the two orifices, one at each end. They are hung with small oval balls of gold, silver and brass, for the sake of a finer combination of sound.' (Le Moyne, 1875, p. 13; Swanton, 1922, p. 372; Swanton, 1946, p. 629).

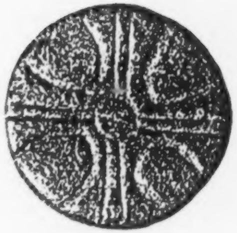
"Le Moyne describes how the chief Saturiwa once came to visit him accompanied by a considerable military force, and 'next to himself were twenty pipers, who produced a wild noise without musical harmony or regularity, but only blowing away with all their might, each trying to be the loudest. Their instruments were nothing but a thick sort of reed or cane, with two openings, one at the top to blow into and the other end for the wind to come out of, like organ pipes or whistles.'" (Le Moyne, 1875, p. 3; Swanton, 1922, p. 375; Swanton, 1946, p. 628).

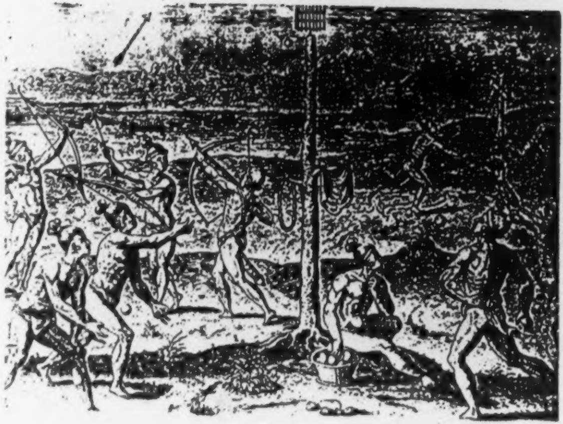
Swanton discussed featherwork among the Southeastern Indians (Swanton, 1946, pp. 454-456):

"From Virginia to Louisiana garments and blankets were made by fastening feathers upon a kind of netting. Feather mantles were perhaps worn for ornaments as much as for warmth. . . . Du Pratz thus describes the Natchez method of making these: 'The feather mantles are worked on a frame similar to that on which wig makers work hair. They lay out the feathers in the same manner and fasten them to old fish nets or old mulberry-bark mantles. They place them in the manner already outlined one over another and on both sides. For this purpose they make use of little turkey feathers. The women who can obtain feathers of the swan or Indian duck make mantles of them for the women of the Honored class.' (Le Page du Pratz, 1758, vol. 2, pp. 191-192; Swanton, 1911, p. 63). Of the Creeks Bartram (1792, p. 500) says:

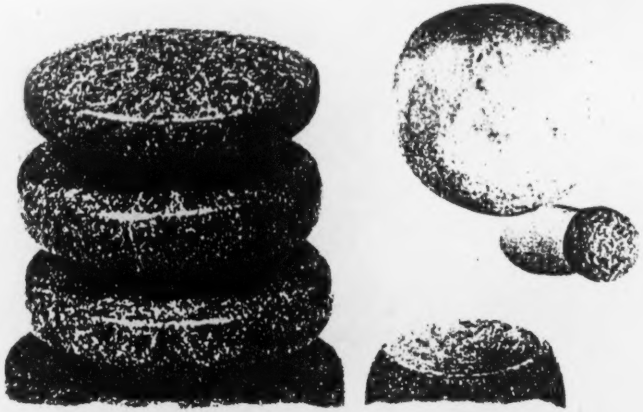
'Some have a short cloak, just large enough to cover the shoulders and breast; this is most ingeniously constructed, of feathers woven or placed in [illegible] most [illegible] imbricated manner, usually of the scarlet feathers of [illegible]

"To [illegible]





ABOVE. LEFT. Engraved discoidal; greenstone, 1¾" diameter (Lookout Mountain Museum). RIGHT. "The youth at their exercises." From an engraving by De Bry after a drawing by Le Moyne, who visited Florida in 1564-65. Timucua tribe. The natives are throwing balls at a target—a frame of rushes, twigs or reeds on top of a post; others are shooting bows and arrows; and still others are racing (Courtesy, Smithsonian Institution, BAE, 1186-b-13).



RIGHT. NEAR. Four granite discoidals; largest 4⅛" diameter and 1-7/16" thick. Spiro Mound. Oklahoma (Courtesy, P. F. Molloy). FAR. UPPER. Two stone balls; larger, 3½" diameter—quartzite; smaller, 1-1/3" diameter—sandstone. Carson site, Coahoma County, Mississippi (Courtesy, Dabney Carson Pelegrin). LOWER. Two discoidals; large sandstone bi-concave dis-

Senator Fowler. Very fine. Thank you. Ms. Stein?

STATEMENT OF LYNN STEIN, FLORIDA CHAPTER OF THE SIERRA CLUB

Ms. Stein. My name is Lynn Stein, and I am a representative of the Florida Chapter of the Sierra Club.

We would like to commend Mr. Bennett for introducing H.R. 1983, and we feel it is a much needed piece of legislation for the State of Florida because it has national significance. People from all over the country choose Florida as a vacation spot because of the beautiful shores, our beaches, and the recreational opportunities, fishing. And we feel if you don't preserve these resources for the people of the United States, then we will lose prime vacation spots.

The north Florida wetlands also serve as nursery grounds for a number of commercial fish. So, there are important nursery grounds as well.

And this is a rapidly growing area. And the wetlands in this northern area of Florida are known to be the most productive, and they are the home to a number of rare species. And many of these species depend on the ecology of the surrounding wetlands and also on the ecology of an island called Fort George Island. And this island is a very beautiful island. It is sparsely populated, and it has a lot of endangered plant and animal species. One of the wild plant species is the wild orchid that grows there.

And we would like to see Fort George Island included in this H.R. 1983.

Senator Fowler. Is there a bridge to the island?

Ms. Stein. Excuse me?

Senator Fowler. Is there a bridge to Fort George Island?

Ms. Stein. Yes. There is access to the island.

Senator Fowler. I have got a picture of it here. I just couldn't tell.

Ms. Stein. On the island there is Kingsley Plantation. I grew up in northeast Florida, and I used to go there as a child. And I can remember looking over the expanse of the marshes and seeing the remnants of the plantation. So, I feel it is important to leave it in the natural state so that you get a historical sense of the way things used to be. I think it would be difficult to get that historical sense with condominiums and McDonalds and Burger Kings everywhere. So, the bill has important historical significance.

We feel that the Timucuan Preserve is a unique integration of history and the natural resources preservation. And we think that it could serve as a symbol to the country that progress and preservation can go hand in hand.

And I would like to thank you, Mr. Chairman, for your time.

[The prepared statement of Ms. Stein follows:]

Statement of Lynn Stein, Florida Sierra Club
before the Senate Subcommittee on Public Lands, National Parks and Forests
on H.R. 1983, the Timucuan Ecological and Historic Preserve
September 29, 1987

MR. CHAIRMAN, thank you for granting me the time to testify before this distinguished Committee on a bill that is vital to the preservation of Florida's diminishing coastal wetlands and the course of history these wetlands helped to shape.

Approximately two thirds of the entire U.S. population lives within 50 miles of a coastal area. If this statistic remains the same and the population continues to grow, there will be a continued demand placed upon our coastal resources.

A recent report, Wastes in Marine Environments, put out by the U.S. Office of Technology Assessment, predicts that the quality of our estuarine and coastal waters will continue to decline unless a stricter policy is taken towards the dumping of wastes in these areas.

The importance of wetlands as filters for pollutants, as flood barriers, as breeding grounds for commercially-important fish and shellfish, as providing fresh water to maintain underground aquifers, and as breeding and feeding grounds for aquatic birds and waterfowl has been recognized long after substantial damage has been done. All too often, wetlands have been viewed as barriers to development and have been assaulted for crimes against human "progress". What we recognized very late in the game was that, in the name of progress, we were defiling natural resources which, if managed properly, would be an aid to progress.

Southeast Florida, which once had mangrove swamps lining its shores, experienced major structural changes for the sake of development. Because the trees were considered to be an obstruction to the view and to access to the water by bathers, the mangrove trees were uprooted, only for us to discover how integral these swamps were to flood protection. And what good do these wetlands serve for the building of structures unless these lands are stabilized? So we have typically filled in the wetlands with solid material so that development could proceed. In doing so we have diminished our fisheries and natural water filtering process.

Not only do we structurally defile wetlands, but we choose coastal areas where they exist to dump our municipal as well as toxic wastes, overburdening their natural ability to filter pollutants from the water.

Although today we acknowledge the importance of wetlands to wildlife and to humans as well, we haven't taken enough reconcilatory action to compliment this recognition. Wetlands are disappearing at such an alarming rate that we must take every measure possible to preserve what is left. I believe that developers have a very misconstrued definition of preservation and see it as an inhibitor of progress. But if we are to preserve life for generations to come, we cannot expect to do it through the destruction of wetlands. Preservation in itself is progress.

MR. CHARIMAN, I commend Mr. Bennett for introducing H.R. 1983. It is a much needed piece of legislation for the State of Florida and has national significance. People from all over the country choose Florida as a vacation spot for its beautiful shores and recreational fishing. If we do not preserve these natural resources, then the United States will lose one of its prime vacation spots. The Northern Florida wetlands also serve as nursery grounds for a number of commercial fish, which will become a growing market as more and more people recognize the healthful benefits of eating fish.

The wetlands of Northern Florida are known to be some of the most productive areas in the United States and are home to a number of rare and endangered species. Many of these species also depend on the ecology of Ft. George Island for growth, reproduction and survival. The Florida Sierra Club strongly supports the inclusion of Ft. George Island in the Timucuan Preserve and believes that such an inclusion will greatly enhance preservation efforts.

There is one aspect about the bill that concerns me, MR. CHAIRMAN. This is in regard to the northern boundary that is being proposed. The map that the Park Service has drawn up indicates that this boundary line is along the center of the Nassau River. The Nassau River and its surrounding wetlands are virtually untouched and warrant adequate protection. The Florida Sierra Club would like to see the entire width of the river protected, including a buffer on the north side of the Nassau River. Without this boundary change, the proposed boundary would do nothing to preserve the pristine quality of the Nassau River. It is our hope that the entire Nassau River be included in the final plans for the Preserve.

The proposed bill also preserves areas of national historic significance. The preservation of wetlands, besides being an environmental feature, is historic, for the wetlands portray the landscape that existed during the times that the historic events occurred. Because these lands surrounding the historic sites would be preserved, a more accurate and realistic interpretation of the past would be made possible. Let's face it, a view of a MacDonald's Restaurant from the Kingsley Plantation would not be condusive to the understanding of past events. Visitors would get a much better feel for the past history if they were immersed in an environment similar to that in which the events occurred.

The Timucuan Preserve is a unique integration of history and natural resources preservation and serves as a symbol to the country that progress and preservation go hand in hand.

Thank you, MR. CHAIRMAN, for your time. I would be happy to answer any questions that members of this distinguished Committee have.

Senator FOWLER. Willingly given. Thank you.

Ms. STEIN. Thank you.

Senator FOWLER. Mr. Peterson?

STATEMENT OF WILLIAM M. PETERSON, GENERAL MANAGER, FAIRFIELD FORT GEORGE ISLAND

Mr. PETERSON. Mr. Chairman——

Senator FOWLER. You must be the developer.

Mr. PETERSON. I beg your pardon?

Senator FOWLER. You must be the developer. I just figured it out by looking at this picture.

Mr. PETERSON. Did you see a black hat up there?

Senator FOWLER. No, I don't see any hats. I look forward to hearing from you.

Mr. PETERSON. I am the general manager for Fairfield. And do you have my statement for the record?

Senator FOWLER. Yes.

Mr. PETERSON. I will abbreviate it as much as possible so that I can just go through some of the highlights.

I have spent the last four plus years involved with the development of Fort George Island, attempting to get it approved. We have prepared such items that are unique in the State of Florida, that have never been done before—i.e., a master resource management plan which took us 15 months to prepare at a cost of well over $2 million. It has never been done or required in the State of Florida before.

That master resource management plan involved every "ology" that you can think of having to do with land development. We went into archaeology at very, very great detail. Dr. Fairbanks, who passed away a few years ago, did an in-depth archaeological survey of not just the properties that we owned on the island, but other properties on the island.

And we happen to own, by the way, over 70 percent of the island itself, along with the Kingsley Plantation and the Rollins Bird and Plant Sanctuary.

We were the ones that submitted the San Juan Mission to the national list of historic places for its incorporation. This was not done at a request by any agency, but at our own request. That was recorded in March of 1986.

We recognize full well that any development that takes place on the island will be done with the archaeology and all of these studies that we have done in the past well beforehand before we put anything into the ground.

We have received approval at every level of the State except for a few remaining technical approvals that are at the 12th hour at this point in time. We feel very confident that what we have done will be in the best interest of the island. We have worked with every agency up to this point in time.

And I did testify in front of the House panel at that time and stated that we were in disfavor of Bill H.R. 1983. However, I think at this point in time—and we have had several discussions with Congressman Bennett and his staff. We did get report language in the House bill that said that there would be no interference by this bill or no intended interference by the bill of the approval or the development of our island in the future.

What we would request in the Senate bill would be not just report language, but statutory language if possible, that would certify and support that same position. In that light we can heartily support H.R. 1983.

We have no intent of going in there and scarring the island. Our track record speaks for itself. We have 29 developments from coast to coast, as well as down in the Caribbean. I have not been involved with all of them personally, but I have spent my time involved with Fairfield Fort George Island.

My office is on the island. I go in and off that island every day. You asked if there was a bridge on the island. There is no bridge on the island. There is an existing causeway on the island which at any type of high tide becomes a wash and it becomes difficult getting on and off the island.

[The prepared statement of Mr. Peterson follows:]

TESTIMONY OF
WILLIAM M. PETERSON,
GENERAL MANAGER, FAIRFIELD FORT GEORGE ISLAND
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS
ENERGY AND NATURAL RESOURCES COMMITTEE
UNITED STATES SENATE
SEPTEMBER 29, 1987

Thank you Mr. Chairman and Members of the Committee. My name is William M. Peterson and I am General Manager of Fairfield Communities properties located on Fort George Island in Jacksonville, Florida. I appreciate the opportunity to appear before you today to comment on H.R. 1983 as you begin your consideration of this legislation.

Fairfield Communities owns approximately 70% of the property located on Fort George Island, with the remainder currently being held by approximately 48 landowners and by the State of Florida, that is, the Kingsley plantation and the Rollins Bird Sanctuary.

Although it had not been included in prior attempts to pass this legislation, Fort George Island has now been included for the first time in H.R. 1983 by the House of Representatives. Naturally, we are concerned about the potential effect that this legislation will have on the future use of our property.

To begin, it may be helpful for me to explain our history and interest in Fort George Island. In 1981, Fairfield Communities began to acquire land and plan for the creation of a major resort and residential development on Fort George. In 1982, the process of acquiring the necessary permits to begin construction on this area was started. I joined Fairfield in 1983 and I think one of the reasons it was a natural fit for me was because of the fact that I was responsible for ecologically sound and environmentally sensitive developments on Hilton Head Island, South Carolina, Incline Village, Nevada and other places around the country.

Fairfield has every intent to proceed in such a sensitive manner. Fairfield Communities has demonstrated that it is committed to the principle that sound development and environmental protection are compatible goals.

The development planned for Fort George is a Planned Unit Development or "PUD" consisting of approximately 1343 dwelling units, a 27 hole golf course, approximately 80,000 square feet of commercial space. The density of the development is about 2.1 units per acre.

Our plans are to retain as many of the existing trees and other vegetation on the property as possible. In fact, all of the infrastructure will be state of the art, with all residential service installations, such as electricity, phone, cable, and water supply, being placed underground. We are also installing a sewage collection and treatment system for the entire development. This is infinitely more environmentally sound than septic tanks and the myriad of individual wells which are currently in use throughout Fort George Island and the surrounding area.

A unique aspect of our state-approved development order is the requirement that we have the capacity to retain the 100 year - 24 hour storm event, which amounts to about 11 inches of rainfall, with zero discharge. This will significantly assist in the protection of the Class II Outstanding Florida waters from any degradation from the island. This requirement has not been imposed on any development in the State of Florida prior to Fairfield

Fort George and we are proud of our ability to undertake this environmentally protective program.

Our permitting approval process has not been without substantial effort on our part. The City of Jacksonville approved the PUD on January 10, 1983 and all but a few of the necessary permits to begin construction have been obtained. Jacksonville can point to Fairfield Fort George as the type of development of which it would be very proud. In addition, as you well know, this 200 million dollar project will produce hundreds of needed jobs and will create additional tax revenues which will benefit all citizens of the area. With a little luck, we hope to begin construction before the end of the year.

Our commitment to the property is demonstrated by the substantial volumes of engineering, technical, historical, cultural, and other types of studies and assessments Fairfield has undertaken for the property. We know what exists on and in the property and as a result, have carefully and consistently planned all parts of Fairfield Fort George.

All of these things have been done at substantial cost to Fairfield. We estimate that we have invested nearly $14,000,000 in purchasing property, preparing studies, and in securing permits which would allow us to proceed.

At first glance, H.R. 1983 appears benign because it specifically states that private upland property may not be taken for inclusion in the System by the Federal government without the consent of the owner. However, you and I recognize the extraordinary restrictions that could be placed on future development by virtue of the fact that the area is included in a national preserve.

Unlike other property owners across the country who may be concerned that their rights to develop their property some time in the future will be restricted by being included in a national preserve, Fairfield Fort George Island is here and now. We are committed to this project and have expended extensive resources toward its success.

Recognizing both the substantial investment that Fairfield has made and the potential impact that this legislation could have, Members of the House Interior and Insular Affairs Committee included a statement in their Committee Report which indicates that this legislation is not intended to affect in any way the development of this project. The language specifically references the permitting process, thereby protecting existing permits and the future permitting processes from interference due to the passage of this legislation. We appreciate Congressman Bennett's agreement to include such language and the bi-partisan effort made by Members of that Committee to state their intent in this way.

We hope that the Committee on Energy and Natural Resources would include the same paragraph in its Report. However, while we recognize that Report Langauge is generally used by government agencies to ascertain the intent of Congress, we are concerned that there is potential for an unintended misunderstanding between the statutory language relating to the administration of the proposed Timucuan preserve and the Report language. Further, the provision allowing condemnation of wetlands on or around Fort George Island could interfere with existing permits related to the PUD and to our stormwater retention permit as well as to permits still needed. Members of this Committee should recognize that the term "marshlands", used in earlier versions of this bill, has been replaced this year with the term "wetlands", which has a broader and more far-reaching definition.

Therefore, we are asking Members of the Committee, as well as Senator Chiles, Senator Graham and Congressman Bennett, to include a clarifying provision in the statute itself ensuring that this legislation is not intended to affect this project or interfere with the Federal, state and local permitting process as well as the planning and future development of this project. The Report language could then be used to discuss this provision in more detail.

We very much appreciate the discussions we have had with Committee staff regarding this matter and hope that appropriate language could be added to the bill which would avoid any potential misunderstanding in the future for both Fairfield and any possible successors.

The entire matter is one of fairness. If Fort George Island had been included in previous attempts to pass this legislation, then we may have conceivably chosen not to proceed with our plans. However, we are now at the midnight hour on a matter which we believe is essentially local in nature. We hope that Members of this Committee will recognize the time, effort, and significant investment put into this project and will provide us with the assurances we need, so that we will be able to continue with our efforts begun six years ago.

As I said in my House testimony, Fairfield is doing everything possible to make certain that the area is developed in the right way. Fairfield has proceeded in good faith and we will continue to be a good citizen and a good neighbor.

If this bill is passed and signed, we would be pleased to work with the Department of Interior in appropriate ways to assist with its implementation. We would be pleased to share our volumes of scientific, historical and cultural data on this area. In addition, Fairfield Fort George would consider the donation to the Preserve of certain peripheral submerged lands on which we currently pay real estate taxes. We are currently on record stating our desire to donate these submerged lands to the State of Florida upon receipt of our approvals to commence development.

Further, we would continue to work with government officials administering the area to provide greater access and understanding of the Kingsley plantation and the Rollins Bird Sanctuary. We are already working with Florida Department of Natural Resources officials on establishing interpretive trails and signs into the Rollins Bird Sanctuary where none exist today, thereby enhancing the accessability and understanding of this valuable resource for all.

Thank you very much for your consideration and I am pleased to respond to any questions you might have.

Senator FOWLER. What are you going to do about that if it is developed?

Mr. PETERSON. We are proposing in our land use plan—we will construct a brand new access wherein we will elevate the roads to retain the 100 year 24 hour storm on the island. That is 11 inches of rain with zero discharge to the surrounding waters. Therefore, there will be no pollutants going via surface runoff into the surrounding waters. Again, that is unique in the State. That has never been required before.

Senator FOWLER. Does H.R. 1983, as written, prohibit—if it passed in its present form of the House version your development?

Mr. PETERSON. No, Senator, it doesn't. What it does do though is it can be a little vague in the area of what would the National Park Service do with regards to the imposition of some of their rules and regulations that maybe we are not privy to. And I guess that is one area that we would like to request statutory language to make sure that we would be able to go ahead with our development.

Senator FOWLER. I understand that concern; you are trying to anticipate what might happen. You're understanding now from your lawyers and looking at the bill as written is that under present development plans there would be no prohibition.

Mr. PETERSON. Well, it says there would be no demand for selling the property to the Federal Government.

Senator FOWLER. No taking.

Mr. PETERSON. No taking, correct. That is correct.

Senator FOWLER. Who owns the other 30 percent?

Mr. PETERSON. Well, the other 30 percent is owned by some 35 to 40 residents, some of which are—there are about 19 houses on the island. The rest of the properties would be owned by individuals who just own the property which is undeveloped. There's about 70 acres in the Rollins Bird and Plant Sanctuary, and somewhere in the neighborhood of 15 to 20 acres in the Kingsley Plantation State Park up in the northwest part of the island. And there are, I would say, about—I haven't made an exact count, but I would say about 12 full-time residents. The other remaining homes would be second homes or summer homes.

Senator FOWLER. Have either of you or Congressman Bennett's staff reviewed the statutory language requested by Mr. Peterson?

Ms. STEIN. Requested by whom?

Senator FOWLER. By Mr. Peterson.

Ms. STEIN. In my discussion with Representative Bennett over here, he said to me that there is no language that states that they can take the property and that it can be owned or taken by the State or the Federal Government. So, that is my understanding. So, I don't see that his development is in any danger of being taken and included in this. And this is the understanding that Congressman Bennett gave to me.

We would like to see it included, but there is no condemnation language in there.

I suppose the concerns that you may have, Mr. Peterson, are that if you establish an ecological preserve, then you recognize the ecological significance of the area. Currently Fort George Island development has not had the approval for all the permits. And I believe you have a number of permits that he has to get now.

So, it hasn't been established that the development on Fort George Island will not be harmful to this area.

Senator **Fowler**. Again, I am just talking off the top of my head, but you have got a developer who has already invested $12 million to $14 million——

Mr. **Peterson**. It's $14 million.

Senator **Fowler** [continuing]. $14 million here.

Ms. **Stein**. Well, and it is——

Senator **Fowler**. But he is offering support for the legislation in return for certain assurances that it sounds like you are willing to give.

I see my friend and the dean of the Florida delegation.

Ms. **Stein**. You are just in time.

Senator **Fowler**. Please have a seat, Chairman Bennett. We are delighted with your work, and as always no man was kinder to me in the House of Representatives in the days of my misspent youth.

Mr. **Bennett**. You got a——

Senator **Fowler**. Well, don't tell all you know.

But we are discussing your legislation, Chairman Bennett.

Ms. **Stein**. I was just trying to explain your position on the statutory language.

Senator **Fowler**. Let me just summarize briefly, and let Mr. Peterson speak for himself. Mr. Peterson was saying that they have to this juncture spent about $14 million in their anticipated development on Fort George Island, but that with certain assurances concerning the completion of their plans with ecological and archaeological safeguards, at least from their perspective—with certain assurances that those will continue, he could support the bill.

Now, he does not have the specific statutory language before him that he would like to see in order to give him and his, I'm sure, investors certain assurances that there would be no takings in the future and what the limitations would be. But I do think it is an area, it seems to me just off the top of my head, where you ought to look at his language to see if everybody can't be in agreement on moving forward with it.

Mr. **Bennett**. Well, let me explain. I think I can explain.

Senator **Fowler**. Please, sir.

Mr. **Bennett**. I'll be very brief.

This bill was going down the course without Fort George being involved in it. And then the owners—or most of the owners—came to me—people that lived there—and asked for Fort George to be included. So, it is included in the bill in the sense that it is within the parameters of the extreme area that might be put into the preserve. But unless the government actually takes that land, none of the land is to be in the preserve. In other words, the government has to take it to really make it into a preserve.

And it also provides that the lands other than wetlands, marshlands, cannot be condemned. They have to be done with the consent of the owner. Now, in the House bill, when it was proceeding through the House, the owners asked me to include it, and I said, well, under those circumstances we can't condemn it. But if Fairfield decides they want to sell it, that will be okay.

So, the House committee came to me I assumed at the request of Fairfield and gave me language to put in the bill, that they want to put in the bill—I understood Fairfield did—and also language in the report.

Senator FOWLER. Well, what they are requesting now is I think that you put it in the report language——

Mr. BENNETT. They want to take the report language——

Senator FOWLER. They want to put it in statutory——

Mr. BENNETT [continuing]. Put it in the statute.

My problem about that really was precipitated by a letter which I received today from Fairfield in which they said that it was their understanding that I would not want to do anything further toward putting Fort George in this preserve. And nothing could be further from the truth. I would like to put it in the preserve.

And so, I felt like if they are going to put that in the statute on the basis of what the committee put in the report, my integrity is at stake here. I never told them I—I just gave in to the committee to put it into the report. And it is ambiguous language in the report. It to me did not imply that there could never be an effort to put Fort George in the preserve. But the letter they wrote me implied that I myself would pledge myself never to put it in the preserve which, of course, is nothing further from the truth.

They know that I am working actively to get the State to put up the money and a Nature Conservancy agency. I am actively pursuing that. There is no secret about it. They know it. It has been in the press, and they know it from conversations.

So, the language that is in the report, it seems to me, is as far as I would like to go. I don't really want to have any more language in the statute.

And there is another reason I don't want to have more language in the statute. And that is if it gets in the statute, it will have to go to conference. And that delays it. And I am going to have to sell the cabinet of Florida to come up with the money to purchase this land. In the meantime, Nature Conservancy I hope will buy it and get the money from the State eventually. That's the present plan, to get Nature Conservancy to buy it, and the State would eventually purchase it. That's the plan.

And I am just hesitant to put into the statute something which they construed in the letter to be a pledge by me that I would never move toward putting Fort George under the statute while I want it to be under the statute. I can't be against something I want. They know in the law that passed the House—the bill—in the language of the bill, the statute, it says that you can't take their land without their consent. So, what more do they want?

I don't know why they would want an ambiguous language saying that we would never move toward putting Fort George under it when I want to put Fort George under it.

The other thing that came up was some feeling—I think this was raised by my own staff. It has no foundation in fact. And that is that there would be some worry that the people would feel like that being next to the park they would be in some way inconvenienced. Just exactly the opposite is true. The properties go way up in value if you take other national parks. If you take an easement, you have to pay for it, and nobody is going to take an easement on their property.

What I am saying to you, I can't really give into the language they want. That doesn't mean the committee wouldn't decide it should—I mean, the committee has got the full authority, but I myself don't want to do it partly because of the fact that that letter was written which implied that I had already promised that I would never work to put Fort George under the island. Well, as a matter of fact, I have never failed to want to put it under the island—under the statute.

So, the language in the report language is ambiguous. Whether it could be straightened out where it was not so ambiguous, maybe it could be because when I talked to these gentlemen from Fairfield, they said the language of the letter was not really what they thought I had said. But they handed me the letter.

Senator FOWLER. Well, I think I understand the situation.

Mr. Peterson, do you have anything else you would like to add?

Mr. PETERSON. In no way are we questioning Congressman Bennett's integrity. I want to make that very, very clear. The letter that was written took the language out of the report language and from that basis put it into the letter as an interest of ours. And that was the only intent of the letter to Congressman Bennett today.

What we would like to see certainly is to have statutory language in the Senate version that would assure our ability to continue with the approval and the construction and the development of the properties that we have worked on for over six years. We would certainly like to see report language in the Senate version that would support that same position.

Mr. BENNETT. The report language would not be offensive to me at all. I have already agreed to that on the House side.

And they are trying to go ahead and develop this property. I don't think they are going to make it. They have several other big hurdles to cover, and I don't think they can make them. I am not doing anything about it, at least I haven't yet. I may eventually. But they have the Corps of Engineers, and they got the barrier island thing, and they got one or two other things facing them. So, I don't think they are going to make it.

They certainly, in my opinion, are not going to make it because of the tremendous population that they are trying to bring to this island. And if they don't have the tremendous population, they are not going to be able to sell the property enough to get back their money. So, I feel that they are on a losing course.

And eventually they will be coming knocking on my door and ask me to be cooperative. And I'll be very cooperative—that is, toward making it into a national park.

Mr. PETERSON. Senator, from our perspective, the people that are being brought onto that island at a density at 2.1 units per acre is not going to overpower the island, and it is certainly not—if you look at most developments, the development right to the north of us 20 miles away has got a density of just under 5 units per acre, and that is certainly not dense. So, we are not going to overpower the island with people.

Mr. **Bennett**. Well, Mr. Chairman, one of the problems about this island is it is really unique. And I think the people that came and started developing didn't realize it was unique. But it is very unique. It has got two 16th Century—places where there were battles there during the 1500s. It has got the remains of a mission that was founded in 1585 and was the head of the Catholic Church of what is now the United States, a great guy there that is being thought about for sainthood, Father Parejo. He is under consideration for that because he taught the Indians how to write and published books actually in the 16th Century. And that goes all the way down to modern times.

I mean, there are just loads of historic sites on it, beautiful marshlands, a very small island. There is no other island anywhere in the United States that is comparable. And just to put a heavy population on it, it's not the best use for that land.

And I don't like to see these people hurt. You see, if I was going out to hurt them, I would have tried to put condemnation in the bill. See, I have been very gentle about it. In other words, they have to give in. They have to decide they want to sell it under the bill, under the statute language. So, they are really pretty well protected. I don't see what more protection they want.

But I didn't want to pledge—and I don't think the Senate ought to pledge—that we would never decide ever to go into a national park activity because I think they are going to probably be asking us to put it in. And besides that, if they didn't ask if we could do it without really violating their will, because it requires their will, they have got to decide they want to do it. And condemnation is specifically excluded under the bill that passed the House. In fact, it was specifically excluded before Fort George was considered to be put into the bill. In other words, even before Fort George was even being considered to be put in the bill, the language of the bill proscribed, prohibited, taking of land by condemnation.

Well, the committee could look at it and decide on it.

My major concern, Mr. Chairman, is that I am apprehensive that this bill would go to conference, and will never see the light of day. That's my problem.

And I have reasons for feeling that. In other words, the House committee did the very best they could to pass the bill for me, and I am very grateful for them doing it. But they made a lot of compromises. They wanted a lot more marshlands than they got, number one. That's the thing that they really wanted a great deal. They were very enthusiastic about that. And they wanted wetlands to be spelled out instead of marshlands.

I made a lot of compromises to get the committee to be willing to bring it out. They brought it out, and I am afraid if we started hassling about something else, they would just say, well, we can't ever get the Senators together or something.

So, my main apprehension about the language is not really so much the language. If the committee put it in, it wouldn't be me agreeing to it anyway. It would be the Congress agreeing to it. And I don't want to agree that I would never want to see it come into the National Park Service.

I am not sure that that language says that. What it does say is that there are not going to be any—what it does say—and I favor this. I favor the stance of the legislation saying that this bill is not to stand in the way of any DRI—that's environmental or anything like that—propositions. In other words, this legislation was not designed to thwart their efforts to go through the regular procedures. I never intended it to thwart their ability to go through the regular procedures to see if it was environmentally sound. I don't mind language in the statute that says that except for the fact I think it would hold up the passage of the bill. I don't think it is needed because the language in the report of the House makes that clear. And I agreed to that language.

I think that is the reason they wrote the letter to me. They thought that was my language. But it wasn't my language. It is what the committee said, and I agree with that language. But it is not something that I myself am taking an initiative about.

Mr. PETERSON. Senator, as stated in my written testimony, we are close to the midnight hour of our approval. We have received all of our environmental approvals contrary to what you have heard.

Mr. BENNETT. Don't you have the Corps of Engineers yet to go and——

Mr. PETERSON. We have a dredge and fill permit that totally involves .45 acres of marshland which there will be a public hearing on on November 4. That is minuscule at best. And if in fact that does become a hurdle, we can redesign the bridge to avoid that. They do not become that major an event that we have to jump over.

One thing we have to redo now is a revised PUD ordinance because we have abandoned our amended development order which is a procedure in the State of Florida because we do not meet the criteria levels to be considered a development of regional impact even though we have operated under that guise for the last five and a half years. But we are right at the verge of securing them.

Mr. BENNETT. You don't have water permits yet, do you?

Mr. PETERSON. Yes, we do. That was approved——

Mr. BENNETT. I thought they had salt water——

Mr. PETERSON. No. We have received our water permits, our consumptive use permit, in December of 1986 from the St. Johns River Water Management District.

Mr. BENNETT. If they are that far along, which I didn't know—if they are that far along, I don't see that that should hold up this bill, particularly if you put the same report language the House did in there saying that this bill is not intended to stop their procedures or thwart their procedures to get environmental things.

I didn't intend to do that. And so, I think you just ought to pass the bill like it is. If you want to repeat the report language, we will live by the report language. After all, all you want to do is put that in a statute. And it is a little ambiguous, but it's purpose is to see that we don't thwart their environmental purposes.

Now, it is a little different to say the law says they are not going to thwart it and that I might try to thwart it. And I never pledged not to thwart it. I am not myself——

Senator FOWLER. Well, I think I understand the problem. That doesn't mean I have the solution.

Mr. BENNETT. Yes, I think you do too.

Senator FOWLER. I don't have all the experience in the world on these matters, as you know. But it is unusual.

You know, this is the continuation of all of the Georgia barrier islands. We have had a lot of wetlands, marshlands, in Georgia on everything from the Cumberland Island National Seashore up to Ossabaw on the Georgia/South Carolina line.

But this is the first time—I was asking the staff about it—I have ever seen where you have got the whole island in the bill, including the proposed development. And so, since you have ruled out condemnation and are not—please correct me if I am wrong—opposing the proposed development——

Mr. BENNETT. Well, I personally——

Senator FOWLER. Well, no, but I mean, the bill doesn't. The bill doesn't.

Mr. BENNETT. The bill says that the bill is not opposed to it.

Senator FOWLER. That's right. I am just talking about the bill. I am just talking about the bill.

Mr. BENNETT. I myself am opposing if I want to.

Senator FOWLER. No, no, no. But the bill doesn't.

Mr. BENNETT. I probably will testify at the Corps of Engineers and also if they have a barrier island operation, I will probably testify about it.

Senator FOWLER. Yes.

Mr. BENNETT. But that is not the law. That's the difference between me and the law. In other words, I can do what I want to do.

So far I have not done anything to hurt them. But if I saw the possibility of putting this under the National Park Service, and it was not too injurious to them, I would be happy to do it. But I have never been sneaky about it. I have always been very open. I have always been very open. I think they will agree with you on that.

Maybe they have misunderstood me at times. Maybe they thought since I agreed to that language in the report that was to bind me. That's only to bind this—see, this law doesn't do anything. It doesn't bind me from saying I want to have a national park.

But there is no power behind it on the part of the Federal Government to take it without their consent. They ought to feel pretty protected. They feel very confident. They got all their reports anyway. So, what concerns them?

I wrote them a letter and asked them why are you concerned about it. It gives you another place to sell the property. It doesn't slow you up. There is nothing in this bill that slows anybody up. I already agreed to the language to keep them from slowing it up.

Senator FOWLER. I am just trying to respond. In listening, what they seem to be worrying about, which is a legitimate worry, if you are a developer is that being in the bill as now written, once they come under the park's jurisdiction, that future, as yet unknown restrictions will be placed on what they contemplate building now.

Mr. BENNETT. That can be handled by another thing. If you feel that is an ambiguity, you could say what I have already testified on both the House and the Senate side. It is not the intention of this bill that any jurisdiction shall be exercised by the National Park Service or by the Federal Government unless and until the land is actually put within the province—acquired by the Federal Government. Until that time it doesn't become part of it.

If that would make them reassured, I would be glad to have that, particularly if it was in the report language rather than the statute. I really don't want to hold up the bill, but I would agree to that being in the report language that it is understood in the passage of this bill that the preserve will not include lands until they are actually acquired by the Federal Government. And that will rule out any problem that they have about that.

I don't want to cloud their title or have this bill make it any more difficult for them to develop. That doesn't mean I don't myself want to make it more difficult for them to develop. But as far as this bill is concerned, I have no objection. I gave my word on that. I told them they could use this language. They are trying to stretch that into a personal pledge by me, but I have not given that pledge.

I may never do anything about it, but events may overtake me. In other words, for instance, they may go in and get enough things done—approvals—because they have several yet to get. But after they get those approvals, they may start tearing up the island, putting up big broad roads and building big buildings on it. And the National Park Service would not be faintly interested in this island if that occurred because its whole nature would change. It would change from an idyllic place where rare birds and things like that come into another suburban development—a very lovely one, it's true. But the public interest in the land will come to an end at that point.

I think it is solvable by putting it into the report language, in other words, making it clear that no land, no high lands will be in the—well, no lands either, no land either wet or dry shall be in this until they are actually acquired by the Federal Government. That would make it clear for them. That would protect them. That could be put in the report language, and I would agree to that. I would like to read the language. I believe that would solve it.

Senator Fowler. Thank you.

Mr. Bennett. Thank you very much. I am sorry we held you up so long.

Senator Fowler. Well, I enjoyed it. I learned something.

Mr. Peterson. Thank you, Senator.

Senator Fowler. Thank you very much.

[Whereupon, at 4:50 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT FOR THE RECORD
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

SEPTEMBER 29, 1987

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to submit testimony on behalf of the Department of Commerce regarding S. 858, a bill that addresses abandoned shipwrecks. The National Oceanic and Atmospheric Administration supports the enactment of S. 858, the Abandoned Shipwreck Act of 1987, with a recommended amendment which we will submit by separate letter.

Modern technological advances have given man greater access to the sea than ever before -- opening vast opportunities for the development of marine resources such as oil, gas, and minerals. Accompanying these advances has been a general recognition of the need for a balance between the use of resources and preservation of the environment. Other marine resources not commonly associated with these economic resources, but also requiring a balance between resource use and preservation, are submerged cultural resources, specifically abandoned historic shipwrecks. Currently, admiralty law recognizes only the commercial value of abandoned shipwrecks. The recognition that abandoned shipwrecks have additional values would be a first step to developing mechanisms for multiple use of these resources.

In addition to their recognized commercial value, abandoned shipwrecks have recreational, historic, and archeological values that may be of local, regional, national or international significance. Under the National Marine Sanctuary Program, established by Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended in 1984, the Secretary of Commerce is authorized to designate areas of the marine environment as national marine sanctuaries to preserve their conservation, recreational, ecological, historical, research, or esthetic values, including sites having cultural, archeological or paleontological significance. These designated sites may include historic shipwrecks having national significance and, under certain conditions, may be located in ocean and coastal waters over which the United States exercises jurisdiction, including the Great Lakes and submerged lands if, as to sites within State waters, the designation is approved by the given State. International law limits the authority of the United States to exercise jurisdiction over abandoned shipwrecks located outside the territorial waters of the United States.

The intent of the National Marine Sanctuary Program is to protect and manage special marine areas for the long-term benefit and enjoyment of the public. Marine sanctuaries include, to the maximum extent feasible, multiple uses of the site by public and private interests, including recreational and commercial uses that do not threaten the basic integrity of the site's resource values.

S. 858 would result in the protection of abandoned historic shipwrecks by asserting United States jurisdiction over abandoned shipwrecks embedded in the submerged lands of a State, in coralline formations protected by a State on its submerged lands, or on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places. The public must be given notice of the location of any shipwreck to which title is asserted under S. 858. The title of the United States would be transferred to the State in or on whose submerged lands a shipwreck is located. Abandoned shipwrecks in or on the public lands of the United States (except the Outer Continental Shelf) would remain the property of the United States Government.

S. 858 also would provide that the laws of salvage and finds would not apply to abandoned shipwrecks to which title is asserted and transferred under section 6. Finally, States to which title is transferred would be encouraged to protect natural resources, to guarantee recreational exploration of shipwreck sites, and to allow public and private salvage activities consistent with protection of the historical values and environmental integrity of shipwrecks.

The problem of protecting and preserving abandoned shipwrecks, while not restricting human use and development of these marine resources, is not limited to the United States, or any particular region or ocean. It is a worldwide problem.

By removing abandoned shipwrecks found within State waters from the jurisdiction of salvage law and recognizing their valuable historic and cultural values, the United States, under S. 858, would be following the example of nearly every other western nation. As early as 1952, several international assemblies and conventions (United Nations Educational, Scientific and Cultural Organization, International Council of Museums, International Congress of Maritime Museums, and the Council of Europe) identified the need for cooperation in shipwreck protection, not only among governments in the international community, but among professional and amateur archeologists, underwater explorers, and sport divers. S. 858 represents an important first step in developing the necessary State-national cooperation in the United States by formulating advisory guidelines for dealing with a portion of our underwater cultural heritage. We recommend that the Departments of Commerce and the Interior jointly develop and publish guidelines for the protection of shipwrecks and properties, instead of the Advisory Council on Historic Preservation, as provided by the bill.

The study of historic shipwrecks provides an invaluable opportunity from several disciplinary viewpoints to study the physical remains of man's activities upon the sea. In many instances the wrecks are well preserved and relatively undisturbed by man or the marine environment.

Historic shipwrecks should be viewed as valuable resources for primary source data on man's maritime activities that are unavailable elsewhere. The potential of these resources is restrained only by our technology and our attitudes towards their value and use. Similar to the fragile coral reefs that can be irreparably damaged by individuals unaware of their ecological sensitivity, historic shipwrecks should not be viewed as resources of only economic value. Sport divers have long enjoyed wreck diving as a form of recreation due to the abundant sea life found in the vicinity of "artificial" reefs and have come to recognize the need for protecting and preserving their favorite diving spots. Additionally, the growth of marine archeology as a science in recent years represents an unprecedented opportunity for properly trained divers to explore the past by discovering and analyzing historical material on the sea floor. Thus, there is increasing recognition that a shipwreck possesses historical and cultural values and that in certain instances these values will be greater than those of traditional salvage. S. 858 would be helpful in this regard because it would effectively place historic shipwrecks outside the jurisdiction of admiralty law, which currently recognizes only the commercial value of abandoned historic shipwrecks.

The famous Civil War Ironclad USS MONITOR was designated as the Nation's first national marine sanctuary in 1975 for its historic, cultural and technological values. It was also the first, and remains to date the only, sanctuary designated exclusively for a nationally significant historic shipwreck.

NOAA's fundamental approach to the management of the MONITOR National Marine Sanctuary recognizes the importance of the shipwreck as an irreplaceable and non-renewable cultural resource of national significance. Due to the ship's historical significance and the high public interest in it, there is consensus that the site warrants careful and deliberate planning so that maximum return and benefit can be derived for the American public. The manner in which the MONITOR is treated can establish a precedent for the treatment of other nationally important historic shipwrecks in the United States in the future.

All historic shipwrecks, however, do not require treatment similar to what we are giving the MONITOR. Few ships in United States history are as nationally significant. At the International Congress of Maritime Museums in the Fall of 1985, it was confidently stated that we will not accept anything less for the MONITOR than the standards of preservation achieved by the WASA, BREMER COG, and MARY ROSE projects in Europe. Future generations of Americans will surely sit in judgement of what we accomplish. However, regardless of the outcome, the record will be clear that we took seriously our responsibility to save the past for the future, and that we preserved for them as much of the MONITOR as we could in our time.

The downside of any archeological excavation and recovery project, besides its cost, is that it can never be repeated. It can be done only once. Thus, a decision must be made as to how to obtain the maximum potential from the resource, and we must be prepared to preserve its value before we risk the destruction of the site through archeological excavation. Additionally, no artifacts should be recovered unless they can be properly conserved and have been previously integrated into a long-term plan for the management of the resulting artifact collection. Previous projects, both here and abroad, have taught us that to proceed with any recovery plans before questions concerning conservation, display, and funding are fully answered will surely jeopardize the resource and the success of the project.

NOAA is carefully studying the relationship of the bill to Title III of the Marine Protection, Research, and Sanctuaries Act. We will submit a report to you at a later date.

If we are to preserve the value of these shipwrecks for the greatest benefit of the American people, then S. 858 is a useful first step. Only by removing abandoned shipwrecks from the jurisdiction of admiralty law can we begin to treat these important cultural resources with the same care as similar resources on land.

Edward M. Miller
One Brice Rd.
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301-757-1488

October 6, 1987

STATEMENT OF MR. EDWARD M. MILLER, ANNAPOLIS, MARYLAND
PROFESSIONAL SALVOR AND SPORT DIVER
TO THE UNITED STATES SENATE
SUBCOMMITTEE ON PUBLIC LANDS, NAT'L. PARKS, AND FORRESTS

I appreciate this opportunity to enter into the record my views concerning the proposed Abandoned Shipwreck Act of 1987.

On April 29, 1987 I was appointed by the Governor of Maryland, William Donald Schaefer, to the Governor's Advisory Committee on Maritime Archeology to make recommendations concerning new state legislation and subsequent regulations for the identification, evaluation, and protection of maritime archeological resources. The Governor's stated intent is for the new Maryland Program to "reflect as nearly as possible 'state-of-the-art' thinking and design."

A major issue confronting this Advisory Committee consisting of "recognized experts in the fields of maritime archeology, artifact conservation and curation, as well as representatives from affected interest groups, such as sport divers" was the issue "Should, under appropriate regulations, recovery of maritme resources for profit be part of the Maryland Program?"

The following position paper reflects my personal views which, in my opinion, are extremely relevent to the proposed legislation before this committee.

I hereby respectfully request that this position paper with enclosures, written for the Governor of Maryland, be considered by the Sub-committee during its deliberations and entered into the published record of these hearings.

Very Respectfully,

Edward M Miller

Edward M. Miller

September 11, 1987

"Is Recovery for Profit in the Public Interest?"

by Edward M. Miller
Annapolis, Maryland

Introduction

This essay attempts to state in a sustantive manner why recovery for profit obstructs archeological research and is inherently deleterious to maritime cultural resources. The author has no claim to any of the presented ideas or principles, as it is entirely the work of others, much more knowledgeable and experienced, which has been synthesized into hopefully clear and concise statements. I particularly wish to thank Cal Cummings of the National Park Service, Barto Arnold of the Texas Antiquities Commission for their comments and advice and Curtiss Peterson of the South Carolina Institute of Archeology and Anthropology for sending his thoughts to me.

A great deal of insight was obtained from the recently published first volume in a series, entitled Law and the Cultural Heritage. The careful reading of this volume is recommended to all who desire a more thorough and comprehensive treatment of the issues presented in this essay. The authors of this noteworthy study have certainly achieved their stated objectives:

"It is hoped that this study will be of real practical use in enhancing the protection of the cultural heritage and in disseminating information about applicable law to those at work in the field. For legislators it may act as a resource book, illustrating a variety of approaches to the problems of cultural heritage. For archeologists it may provide useful information and perhaps provide some background explanation about the nature and origin of the legal regulation concerned. For lawyers and international administrators, it should provide a survey of all existing law upon the excavation of antiquities." (O'Keefe and Prott, 1983).

This particular book is timely for the State of Maryland as it develops its Maritime Archeology Program. In this regard, Maryland is twice blessed. First, Maryland has the opportunity to benefit from the experience and mistakes of those who have preceded it into the rapidly evolving field of cultural heritage law. Secondly, Maryland is fortunate to have a unique, and abundant maritime culture to protect and preserve in the Chesapeake Bay. Let us hope that generations yet to come will be able to enjoy and appreciate the same natural and cultural abundance so easily taken for granted today.

Just as science provides the basis for understanding man's impact on natural resources, scientific methodology is greatly enhancing maritime archeology and the development of the specialized field of maritime cultural law.

It is imperative that maritime cultural law keep pace with the rapidly developing technologies for locating cultural resources underwater that are often well-preserved and protected by nature until they are discovered by man. As with natural resources, it is not the resource which is the problem, but rather man's use of the resource which creates conflicts.

As the social value of these resources is better understood and more widely recognized and as a more systematic approach to legislation is developed, it is hoped that the United States will be guided, not only from our own mistakes of the past, but also from the experience of other nations. This is not only prudent, but entirely appropriate due to the inherent international nature of maritime activities, such as exploration and trade, where often the only remaining visible trace is lying on our riverbeds, lakebeds and seabed. This distinctive characteristic implies dealing not simply with the heritage of our own nation, but also with the cultural heritage of other nations as well. The social and legal issues involved are not limited to any one particular state or nation but rather have international ramifications for the collective cultural heritage of all mankind.

The general omission of such consideration in the widely varying legislative approaches to the maritime heritage in different countries is pointed out in Cleere's introduction to Law and the Cultural Heritage, "It is somewhat curious that, for the most part, national legislation has been drafted without any account being taken of comparable legislation elsewhere in the world."

A scientific approach is just as valid for maritime cultural law as it is for maritime archeology. It has been repeatedly shown that only through a "steady accretion of data within a systematic framework that any real advances in knowledge or understanding can be made; without it, each worker is essentially starting from scratch, and it is if all previous workers had not existed, the same basic questions being considered over and over again." (Muckelroy, 1978).

A more systematic approach to the management of maritime cultural resources and the development of more appropriate and effective legislation in its proper international context, is now being made possible by applying simple scientific methodology to the nascent field of cultural heritage law. "The sophisticated and growing body of cultural heritage law, which may now be seen to be a new branch of law, has emerged from a few random enactments in the seventeenth and eighteenth centuries in a little more than 150 years." (O'Keefe and Prott, 1984).

Furthermore, it may be observed that the basic nature of any scientific endeavor is not to progress at a steady rate, but rather to crawl along and then, suddenly, make a tremendous leap due to a "new" discovery or understanding.

Maritime archeology has matured far beyond its early beginnings in treasure hunting and indiscriminate collection of artifacts. It is time for the discipline and society's attitudes towards the treatment of this unique material culture to mature beyond the issue of archeology versus salvaging for treasure. It is time, as Dr. Philip K. Lundeberg, Curator Emeritus of the Smithsonian Institution, has remarked many times, for the United States to develop a national cultural policy for our maritime heritage. Judging by the increasing pace of recent developments within the last couple of years, the inevitable "molting" process has already begun.

Primary to the issue at hand is the recognition and development of maritime archeology as a scientific sub-discipline of archeology. "The emergence of archeology from the antiquarian amusements of leisured Victorian gentlemen and clergymen into the highly complex and scientific discipline that it is today was accompanied, in the first half of this century, by a serious consideration of the value and purpose of this new study. This movement was associated with the work of Professors Gordon Childe, Grahame Clark, Sir Mortimer Wheeler, and other members of the first generation of professional archeologists. Together, they established a theoretical basis from which the discipline has subsequently evolved. Maritime archeology, however, has been a late developer within even this short lifespan, its appearance having followed from the wartime invention of the aqualung. Furthermore, it has arisen from a background of lucrative salvage operations and the tentative endeavors of amatuer divers, so that it is only just beginning to achieve some kind of internal cohesion. Nevertheless, the volume of material now coming from underwater investigations, and the recent appearance of a few full-time professional maritime archeologists, suggest that the moment has come to consider similarly the value and purpose of this sub-discipline, as an aid to the planning of future research and as a statement of the case for according it wider academic recognition and greater support from public funds. With a clear definition of its scope and potential, it will have come of age and can take its place within the modern discipline of archeology." (Muckelroy, 1978) (Emphasis added)

QUESTION - "Should, under appropriate regulations, recovery of maritime resources for profit be part of the Maryland program?"

Before addressing the issue of recovery for profit, it is first important to clarify the context of the question as the desire to develop the Maryland Maritime Archeology Program (MMAP) as a model state program for the protection of underwater archeological resources. (Schaefer, 1987).

The stated intent and goals of the MMAP as described in the preliminary action plans, distributed at the first Advisory Committee meeting, defines a program that is primarily archeological in nature and concerned with the protection and conservation of maritime resources. In stating the position against recovery for profit, the first premise is an understanding of the nature of archeological research, and the fundamental disciplinary unity between all types of archeology.

Archeology is archeology - whether on a mountain or underwater.

Archeology is the science which studies historical and cultural resources to piece together fragmentary prehistoric and historic remnants into meaningful patterns to understand man's past. Maritimme archeology is a sub-specialization of archeology.

Maritime archeology has been defined as "the scientific study of the material remains of man and his activities upon the sea." (Muckelroy, 1978) As a science, the objective of archeological research is to generate new insights and ideas through systematic research employing scientific theory and methodology. Where no written record exists, archeology is the principal science that can provide information about man's past. Where historical records exist, archeology provides information that either verifies or modifies interpretations of written documents. (NOAA, 1987)

Artifacts are a tangible form of archeological information. ~~The ships~~, cargoes, fittings or navigational instruments which the researcher is initially confronted with are ultimately used to study human behavior and culture. Archeology is not the study of objects simply for themselves, but rather for the insight they ultimately give about the people who made and used them. (Muckelroy, 1978).

Maritime archeology employs principles, theories, and methods adapted for the marine environment from conventional archeological research on land. "The primary norm of every archeological excavation is that a site must be studied in its entirety and in its stratigraphic context." (Bruijn, 1986). To remove artifacts from a site without recording the archeological context destroys the value of the object for archeological research. "An archeological or historical site can occur anywhere on the face of the earth - on a mountain, in a desert, in a jungle, or underwater. The fact that a given site exists in some specific environment does not detract from the cultural significance of the material contained therein...Archeological theory and philosophy encompasses all cultural remains wherever they may be found. The only differences between an underwater site and a site in any other environment are the techniques and methods required to investigate that site." (Lenihan, 1974). Therefore, the "same scientific, legal and ethical standards that apply to archeology on land should also apply to archeology underwater." (Gould, 1983).

Note: For a more detailed and authoritative treatment of what archeology is and the adverse impact of recovery of artifacts for profit, Chapter 8, Theory and Practice in Muckelroy's Maritime Archeology is highly recommended.

A Matter of Ethics

The professional archeological community has taken a longstanding position against any type of recovery for profit which implies the exploitation of archeological sites for personal or corporate gain. The seven major national archeological societies in the United States have all adopted defined standards, codes of ethics and canons of behavior that embrace the conservation ethic which, in part, opposes the selling of artifacts under any circumstances. (See Cummings, 1986). What the statements of ethical conduct collectively address is the inherent conflict between the profit motive and archeological research. In instances where this conflict arises archeology, and ultimately the public, suffer the greatest loss because "the motivation of profit dictates a speed and efficiency in salvage which is inevitably irreconcilable with the painstaking recording and controlled investigation of a site which archeological standards require." (Blackman, 1978).

The Profit Motive versus the Conservation Ethic

The concept of profit from underwater recovery, whether directly from the selling of artifacts, or indirectly from the awarding of a salvage prize, has its roots in ancient maritime or admiralty law. In the United States, the application of admiralty or salvage law to submerged cultural resources has been allowed to occur largely by default, by the absence of specific legislation on the Federal level which asserts the Federal government's "sovereign perogative" or ownership of cultural resources within its territorial waters. (OTA, 1987). Legislation has been introduced into the 100th Congress to address this issue, however, for the last three sessions of Congress similar legislation has failed to pass due, in part, to the lobbying efforts financed by the few commercial treasure salvors who have attracted an inordinate amount of national news media attention.

The law of salvage is based upon assumptions of economic risks and the rescue of goods and vessels which are in peril on the sea. The emphasis is on rescue and uses economic reward as the motivation for the salvage act. The reward, apart from saving life, is based to a considerable degree on the value of the objects saved which is decided by the courts. Consequently, the salvor places the highest value on items having the greatest intrinsic value, and mostly discards all else. (Blackman, 1978) If the rightful owner does not assert any claim, the ship or cargo is declared "abandoned" and the salvor having already commenced "the act of salvage" can legally claim ownership of all recovered materials.

When this has involved "precious" materials hundreds of years old, the effect has been an all out hunt for treasure and profit in total disregard of any historical or archeological value.

Duncan Matheson, who has long defended the proposition that archeology and recovery for profit can be compatible, has provided in his book The Treasure of the Atocha, his personal record of what results can be expected when the profit motive is mixed with archeology.

"When they found the motherlode, it is extraordinary to find Mathewson lecturing his divers on archeological techniques, and, in his own words, failing. After sixteen years there seems to have been hardly anyone interested in archeology. Again, in his own words: 'they pointed to the name, Treasure Salvors on the side of the boat, That's the name and that's what we do. We want to find treasure. We don't want to do all the archeology for you and have the DAUNTLESS crew find the treasure. We are out here for the same reason they are - to find treasure - not to be archeologists.'... The final scene, in which the people interested in doing some form of archeology find themselves in the midst of the obvious chaos, is classic. Almost symbolically the salvage boat 'blows' with the mailbox (as it turns out by mistake) right in the middle of the survey area. 'We'd found the main hull of one of the most important Spanish shipwrecks in the Americas, and it was being blasted by the propwash of the salvage boat. The silver ingots rocked back and forth on top of the timbers as water churned around them violently.'" (Greene, 1987).

Sadly, this is how an archeological discovery that rivaled King Tut's Tomb was disposed of. The only major difference being, one site was on land, and the other underwater. Many generations to come will stand in awe of the grandeur and riches of the Egyptian civilization evidenced by the archeological treasures which have toured the major cities and museums of the world. Only two years after the discovery of the "motherlode" of the ATOCHA, the treasure has been dispersed into the hands of profit-seeking investors, many of whom are now contesting the worth and even authenticity of their "share." (Miami Herald, 1987).

For the vast majority of the American public that did not invest in Fisher's treasure scheme, all that remains are the old issues of National Geographic Magazine whose pictures of the discovery are now accused of being "staged" for the sake of publicity and gold coins whose numismatic value has even been reduced due to the salvor's haste in cleaning them. (Miami Herald, 1987).

It would be impossible and very depressing to list the archeological sites, both on land and underwater, that have been virtually torn apart or otherwise destroyed by indiscriminate treasure and relic hunters simply because of the remote possibility or rumor of treasure. (See Washington Post, 1987) Apparently, there are no limits, including depth and technology, which can suppress the avarice in human nature. The latest TITANIC episode confirms that the greatest threat to any shipwreck, historic or otherwise, is the act of discovery by man.

"The functions of archeology are based on entirely different considerations. A primary aim of the discipline is to advance knowledge of man and his social history by obtaining the maximum amount of information from a site and studying the artifacts, properly conserved, from it. An emphasis on speedy removal of objects from the site and on the priority of those objects which have the highest commercial value is directly incompatible with those aims." (O'Keefe and Prott, 1984).

Simply stated, archeology and salvage for profit do not mix. Neither the desired ends or the means of achieving them are compatible with each other. Only one protects the public interest of society in learning about the lifeways of our ancestors. When dealing with a limited and non-renewable resource modern society can ill-afford to allow personal profit at public expense. In terms of social benefit "...the long-term public gain will outweigh any individual immediate profit." (Blackman, 1978). "The choice, and the responsibility for that choice, must be faced. If no clear distinction is drawn between salvage and archeology, then many sites will be lost to destructive attentions of commercial salvors and amateur souvenir hunters." (Martin, 1981). "In many areas of the world, shipwrecks are an endangered species and all discussion may become academic in a few decades." (Lenihan, 1983).

The issue of whether archeology and salvage for profit can co-exist under some regulatory scheme is no longer debatable. There exists in real time an indisputable trail of "legal" destruction of archeological sites in the United States in cases where a "compromise" between archeology and salvage for profit were attempted. The fact that there is not a single project on record where salvage interests and archeological interests were simultaneously achieved, avoiding for the moment the issue of the public's interest, is solid testament of the ill-advisability of attempting such an approach.

On the other hand, there is a growing list of projects which demonstrate that when archeology conflicts with the salvors search for profit (recovery of precious metals, jewels, etc.) any argument or plea for serious archeological research in-situ or proper conservation treatment of recovered artifacts is either given token regard or completely ignored by the salvors. "...there can be no satisfactory determination of priorities, let alone any solid progress in research, if funds are made available solely on the basis of the commercial value of the artifacts recovered...no integrated and coherent research can be conducted while the funds are determined by the demands of the sale-rooms." (Muckelroy, 1978).

A Recent Case Study

The 1985 Report to the President and the Congress of the United States by the Advisory Council on Historic Preservation reported: "In Delaware, divers located the wreck of the 18th-century British vessel DeBRAAK one of the most exciting finds of recent years and one of the biggest discoveries ever of undamaged marine artifacts. The commercial salvors who discovered it are excavating the DeBRAAK under the direction of the State, which, as required under Delaware law, will take 25 percent of recovered materials. The archeological community and other interested parties are watching this job closely to determine whether commercial and scientific interests and the public good can all be served at the same time." (Advisory Council on Historic Preservation, 1985) (Emphasis added).

Today, just two years later, one should ask what is the disposition and state of preservation of "one of the biggest discoveries ever of undamaged marine artifacts"? What type of archeological recording was conducted? How were these artifacts conserved? Where is the collection located so that future researchers may study them? How are the artifacts being interpreted? Has a report been published? Where may the public see the artifacts on display to learn about the maritime heritage of this country? How much did "private enterprize" cost the tax payers of Delaware and what have they received in return?" How was the public good served by this "job"?

Perhaps the greatest irony of this single example is that the destruction of the archeological site and even the actual recovery of the remaining hull structure was undertaken by the salvors on the "rumor" that there was $500 million in gold and silver on-board.

A final question must also be asked - Would such treatment of a similar 18th century historical resource have been tolerated on land?

Unfortunately, the cultural value of this fragile, finite, irreplaceable and non-renewable resource has all but been totally destroyed in preference to its alleged salvage value. Some may express sympathy for the salvors who "risked" $2.5 million of their own money in their "rush" for the gold - but we must ask ourselves who are the real losers in such cases? The State of Delaware will never know the full value of what was lost, either materially or archeologically, due to the depredation of their maritime cultural heritage. It may be instructive to reflect on the difference in outcome between the MARYROSE Project in Great Britain with the DeBRAAK Project in the United States. Generations of Englishmen will witness their cultural heritage in a maritime vestige of Henry VIII's England, but few, if any, Americans will remember the DeBRAAK or the cultural depravity which destroyed it.

The failure of the Federal, independent and private agencies, charged by Congress with the protection and preservation of the national patrimony, to defend the public's interest in the case of the DeBRAAK is mute testimony of the flawed national heirarchy concerning our maritime heritage. The continuing lack of coherent Federal leadership, consistent policies, and national legislation is sad evidence of the "pervasive 'out of sight, out of mind syndrome' [concerning maritime resources] within government and even within historic preservation itself." (OTA, 1987).

When public and private interests conflict over limited resources, it is a fundamental function of government to safeguard the public interest. "Laws should be so structured as to encourage the responsible investigation of sites, and prevent the raising of objects until such time as an archeological assessment of their [full] potential can be made. It would seem, human nature being what it is, that the only way of restraining the acquisitive urges of people is to make all historic material on the sea-bed the property of the community, thus removing the financial incentives to proceed in a commercial and non-archeological manner; this is the approach which has been adopted in most countries." (Muckelroy, 1978) (Emphasis added).

A Conservator's Perspective

Additional arguments against the legitimization of personal gain at the public expense by a public agency that is responsible for managing cultural resources for the long-term benefit of the people of Maryland have been articulated by Curtiss E. Peterson. (See Peterson 1987).

"Commercial salvaging of historical and archeological resources accomplishes a number of things, very few of them worthwhile." In summary, they include:

1. It is a blatant example of the privatization of public property.
2. It increases the pressure on the resource.
3. It is difficult to control.
4. It tends to compete for control of research energies and priorities within research agencies.
5. It sets unfortunate precedents in resource management.

Conclusion

To sum up, if the programmatic objective is to protect and preserve the maritime cultural heritage of Maryland that rests on the bottom of the Chesapeake Bay and its tributaries, and if it is the intent of the program to be archeological in nature, then the recovery of maritime resources for profit should be excluded from the Maryland Program under any circumstances. This is in accord with the recommendation of O'Keefe and Prott in Law and the Cultural Heritage that "there should be comprehensive legislation protecting the underwater cultural heritage and that salvage law should be expressly excluded from applying to it." (p. 126)

"The United States may well be the only country left in the world where individuals and private companies can legally go out and loot shipwrecks." (Gould, 1983) Isn't it about time that the United States join the rest of the world community and develop a national cultural policy for the protection and preservation of our maritime heritage? The

Maryland maritime initiative presents an opportunity to create a model for state programs of the future based upon the lessons of the past. We can not change the past, we can only influence the future by what we do in the present. For maritime archeology and the preservation of our maritime cultural heritage - the time is now.

Post Script: Hey, wait a minute - why sell the artifacts!

In the process of gathering the source material for this essay, I discovered an interesting book review of The Treasure of the Atocha, by Jeremy Green which pulls the preceeding argument out of the dull and dreery, ends it on a happy note and may stimulate an interesting discussion relative to the Maryland MAP.

Greene states that "May be there will come a time when the projects such as the MARYROSE and the WASA will be appreciated by our masters (they who hold the purse strings) for what they really are: great money making systems... these projects are now earning money - 200,000 pounds a year through bookshops and admissions. [The WASA is the largest tourist attraction in Sweden.] The late and much loved Kelly Tarlton said, a salvor/treasure hunter turned archeologist, that the idea of selling artifacts was just 'plain dumb.' Put it in a museum, charge admission, and create a renewable resource. Even mortgage it, but never sell collateral, not in this day and age." (Greene, 1987) (Emphasis added).

However, before we recommend the "underwriting" of archeological research with the building of new public museums, a word of caution is appropriate. In the past, "state administrations [and others] have been prone to see wrecks much in the same way that treasure hunters do - as just another economic resource in the unharvested sea" (Lenihan, 1983). The administrators of a state program dealing with the maritime cultural heritage must ensure that sufficient safeguards are in place so that when the powerful commercial and political interests that will become involved in any such venture will not be blinded by the lure of "tourist dollars" or other perceived benefits which pressure for "quick" action that may inevitably jeopardize the value of the resource.

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THE NEW YORK TIMES, THURSDAY, AUGUST 28, 1986

Treasures Lost in the Finding

King George III's loss has become Delaware's gain. The hull of His Majesty's Ship deBraak was hauled up recently from the bottom of the Delaware Bay by a salvor's crane. Unfortunately the artifacts cradled in the hull were lost, and the hull itself may have to be sunk again if the state can't find the money to preserve it. The public interest would have been better served by leaving the wreck alone until it could be properly excavated by underwater archeologists.

How to stop the destruction of historic shipwrecks is a question of increasing urgency. Finds like the Spanish galleon Atocha off Key West and the pirate ship Whydah off Cape Cod have whetted treasure hunters' appetites. Techniques like side-scan sonar have made wrecks easier to locate.

But salvagers usually lack the money to excavate wrecks with the care appropriate to archeological sites. The goal is to strip them of precious objects quickly. The loot is dispersed, the historical information in the wreck is abandoned and another irreplaceable time capsule is destroyed.

Archeological sites on land are already protected; why not those on the sea bed? It's hard to devise a formula that rewards the salvor's necessary role in locating and working on a wreck while safeguarding the public's interest in a thorough excavation. Finding and retrieving wrecks is expensive. Melvin Fisher spent 25 years and raised $7 million in search of the Atocha. Without the salvors, many wrecks would never be discovered. But once wrecks are found, state governments need a firmer say about excavation.

Many states, like Delaware, protect a salvager's find from other salvors in return for a share — often 25 percent — of whatever is brought up. But since the state usually contributes little money to the expensive underwater operations, it is the salvor who calls the tune, often a rough one.

Archeologists support a Federal bill to replace the present finders-keepers law with one that grants states clear title to the wrecks within their waters. That might give the states more incentive to invest in full recovery of archeological information. Sympathy for the salvors' adventuresome role has so far stayed Congress's hand. The sympathy is not misplaced, but more is needed to save the nation's underwater heritage from reckless destruction.

D10 TUESDAY, JULY 14, 1987 . . . B THE WASHINGTON POST

Delaware's Sunken Treasure

Associated Press

DOVER, Del., July 13—The crew that lifted the remains of the 18th-century HMS deBraak from the floor of Delaware Bay nearly a year ago was expecting up to $500 million in gold and silver.

Instead it wound up with artifacts—enough of them to fill a large museum.

The raising of the ship that sank off the coast of Cape Henlopen in May 1798 resulted in the recovery of 500 gold and silver coins and a collection of artifacts including ceramics, glass, shoes, clothing and cannons.

Who will get them and at what price, and where they will be stored, has not been decided.

The artifacts are owned by the New England-based Drew Associates, the salvaging company that sank $2.5 million into the project to raise the deBraak last August and scour the bay floor for treasure.

Delaware has put $115,000 of taxpayers' money into the project, to pay an underwater archaeologist to document the ship's hull and to store the artifacts and the hull at an industrial complex in Lewes, Secretary of State Michael E. Harkins said in a recent interview.

L. John Davidson, Drew Associates president, said he wants to give the collection to the state, although the original agreement was for the state to receive a sampling of the artifacts and 25 percent of the profits of the treasure that did not materialize.

"We're in sort of a holding pattern waiting for the state to decide on how we can work it out," said Davidson.

"Our desire is to transfer the artifacts to the state and have them build a museum to accommodate them."

Davidson wants a "wholesale cost transfer" to the state to avoid paying federal taxes on what he is not permitted to write off.

"We want the state to have it at the least cost possible—not at what it cost to get it, but what it cost to transfer it," Davidson said.

He said, though, that such a transfer could cost the state $1 million to $2 million in taxes.

Harkins claimed ignorance of the federal tax problems and possible costs to the state. He said he plans to meet with Davidson this week while attending a meeting in Boston.

INTRODUCING
A NEW FEATURE
DISCOVERING FLORIDA
NEW ROADS TO TRAVEL

The Miami Herald

294 PAGES 3 SUNDAY, JULY 19, 1987 Contents Copyright© 1987 The Miami Herald 75 CENTS

Fisher's Atocha discovery is not all glitter

By SYDNEY P. FREEDBERG
Herald Staff Writer

When Mel Fisher, treasure hunter *extraordinaire*, announced the discovery of a $400 million sunken fortune, he became an instant American hero.

Venture capitalists from New York rejoiced. The Franklin Mint struck a $650 gold ring in his honor. The state of Florida plugged him in a tourism promotion.

For a while, admirers bought his ghost-galleon T-shirt for $7.50: "Remember the golden rule — whoever has the gold makes the rules."

Now, exactly two years after he said he found "the big pile" of the 17th Century Nuestra Senora de Atocha — *the greatest, the richest sunken treasure the world has ever seen* — a number of once-faithful followers no longer believe Mel Fisher is a hero.

These days, all that glitters in Key West is not gold.

"He begged for money and we raised every penny we had and he kept promising treasure, and all we ever got from him was a 50-cent check," says Nancy Touchette, 62, a widow from British Columbia, Canada. She says she and her late husband invested $3,000 in Mel Fisher a long time ago and now he ignores her letters.

"You put your faith in a person. . . . What am I to do?"

Others wonder, too.

A retired California real-estate broker is accusing Fisher and associates of "distortions," "discrepancies," "obfuscations" and "lies" in a scheme against 650 company shareholders. She says she has raised $40,000 from 132 shareholders to file a lawsuit.

A motel developer from Daytona Beach and a boat captain from North Carolina say Fisher and his fiercely loyal inner circle breached contracts with them. For coins and silver bars, they settled quietly out of court.

"I think I got snookered," says Steve Williams, 28, who dived for treasure off Fisher's leaky, rusty boats for more than a year. He is suing. He says Fisher broke a promise on his share of treasure.

Bill Barron, a one-time diver who worked 12-hour days for $150 a week, says he feels sandbagged. His cut was five silver bars and some coins. He says he calculated the value at $318,816.

Then he got his federal income tax form from

Please turn to **ATOCHA / 13A**

A DREAM TARNISHED

Two years after the discovery of 'the big pile' of the Atocha, treasure hunter Mel Fisher finds that life isn't a golden dream. Here are seven stories about the world's most famous treasure hunter:

- **INVESTORS:** A few of their stories.
- **LAB TESTS:** A suspect silver bar.
- **NUMBERS:** A 'mother lode' of them.
- **THE PEANUT-JAR EMERALDS:** The value?
- **SHAREHOLDERS:** Brooding disenchantment.
- **NATIONAL GEOGRAPHIC:** Fisher's friend.
- **AN OLD NEMESIS:** Questioned treasure.

The stories are on pages **12A** and **13A**.

The Miami Herald
Sunday, July 19, 1987 s

Atocha: A D

To ex-followers, Fisher is no hero

ATOCHA / *from 1A*

Fisher. It listed the value at $82,656 — for which he owes tax of at least $23,000. He is concerned that he may not be able to sell it for more than $30,000.

A promoter from Syracuse, N.Y., Jere Hallenbeck, is suing Fisher over an agreement to take 75 divers to Key West every weekend for 22 weeks. "I dove the Atocha," their T-shirts were to have read.

But when the first divers — doctors from Detroit — arrived to see the sunken Spanish galleon, Fisher's people had set up "a false and artificial submerged shipwreck site" and represented it as the true Atocha, according to Hallenbeck's lawsuit.

And now there is a question of the authenticity of a piece of the treasure. Scientists in Attleboro, Mass., examined a silver bar an investor says he got from Fisher. They believe it is suspect.

The same scientists, though, examined eight coins and a gold bar and believe they are genuine.

In the eyes of some investors, Fisher is indeed everything he says he is: rich, famous, compassionate, honest and legal.

"I did not lie and I do not like being called a liar," he informed stockholders in a letter dated March 9, responding to the California broker.

"We should be rejoicing and dividing up the treasure, not fighting amongst ourselves," Fisher wrote in another letter. He warned against any "self-destructive" lawsuits.

Fisher says the widow from British Columbia "is going to make out good." He says Williams, the diver who is suing, has a "ridiculous" complaint. He says he "squared away" a couple of unjustified lawsuits because there was "plenty there for everybody."

Fisher says he doesn't know anything at all about the "suspect" silver bar or the "I-dove-the-Atocha" lawsuit. The promoter couldn't get his act together, Fisher says, adding: "Whatever it is, there's no basis."

At his treasure museum in Key West, admission $5, where tourists line up even before the doors open, admirers buy autographed Mel Fisher pens for $50, paperback books about the search for $9.95, "limited edition . . . not yet released for television" videos for $35, Cupid toothpicks for $85 and silver pieces of eight for up to $1,400.

M*A*S*H
4077th

RICK McCAWLEY / Miami Herald Staff

Mel Fisher and company celebrate the discovery of the Atocha's 'mother lode' in July 1985.

Fisher's savvy lawyer, David Paul Horan, discounts the criticism. To him, Mel Fisher is a hero, the "Ray Leonard" of the treasure-hunting world, a man who can "give us all lessons on what it means to dream."

"I pity people who can't rejoice in somebody else's success," Horan says.

Except for the gold chains that hang from his neck, Fisher, 64, attired in cutoffs, smoking cigarettes, looks like a friendly chicken farmer, which he once was.

For visitors, he sometimes dangles his chains. "You want to sit on my lap for a picture?" he asks. "Wait until I run for president."

Fisher says he is a millionaire. He says his next project will be an $80 million "Treasure Island Club" in Barbuda, West Indies, complete with hotel, golfing club, condos. Also, low-income housing.

To his critics, Fisher usually

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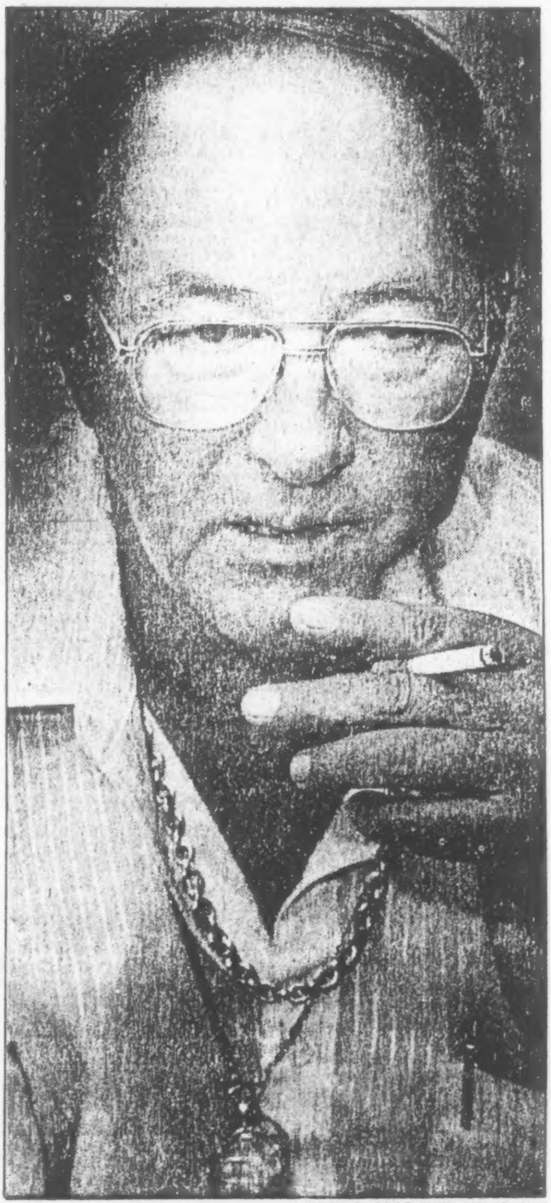
ream Tarnished



MICHEL DuCILLE / Miami Herald Staff

'I just have to let it go in one ear and out the other,' Mel Fisher, 64, says of charges that he has cheated investors.

turns a deaf ear. "There are bound to be all sorts of people claiming this or that," he says stoically. "I just have to let it go in one ear and out the other."

Fisher doesn't like to waste time talking about distractions, he says.

One distraction is a bunch of investigations. Federal and Florida financial investigators are looking into possible securities violations in Fisher's multifarious business arrangements.

He says he imagines the U.S. Securities and Exchange Commission wants to make sure that everything is honest and legal. He says he voluntarily gave the SEC information.

Special prosecutor David Bludworth is conducting a criminal inquiry for the state of Florida.

Asked how long his investigation will go, Bludworth deadpanned: "About 50 years."

Herald staff writer Susan Ornstein contributed to this report.

Amount of treasure and its worth confusing

By SYDNEY P. FREEDBERG
Herald Staff Writer

Mel Fisher says he found "the mother lode" of the Atocha on July 20, 1985. Salvagers, he now declares, will be working the site "through the turn of the century."

Somewhere out there in the ocean, he says, there are still "eight bronze cannons [3,000 pounds apiece] ... 300 more silver bars ... 35 chests full of religious artifacts ... 150,000 pieces of eight ... and an awful lot of gold bars."

The numbers are a bit confusing — even on items already recovered from the sea.

Gold bars, for example: 177, 116, 115, 114 and 75, all reported as a 1985 figure. Fisher's people now say they found 114 in 1985.

Fisher says the numbers are for different times and the press gets things mixed up. "They very often misquote me," he says.

The dollar numbers are also confusing.

Over the years, Fisher and his people have figured the value of the Atocha treasure at "billions," $600 million, $460 million, $400 million, $360 million, $300 million, $200 million, $175 million, $130 million, $100 million and $66 million, depending upon who is figuring when.

Explains Fisher: "They're probably all correct ... When we talk about these hundreds of millions in treasure, they are only wild estimates," he says. "Rough, wild estimates."

Fisher says his values are historic and archaeological. Some items, he says, are priceless and will never be sold.

For the Internal Revenue Service, which prefers precise calculations, Treasure Salvors' board of directors, in effect, figured most of the 1985 treasure at $46 million.

The $46 million is based on a point system. Treasure Salvors assigns a point value to each piece of treasure. A gold bar, for example, might be assigned 2,905 points; a silver coin might get 18 points.

In 1985, Fisher's company says, it distributed 3,280,285 points of treasure.

For employee payroll tax purposes, it set a value of $14 per point. If everyone who received treasure in 1985 worked for Mel Fisher, the booty would have been worth $46 million.

But a lot of Fisher investors aren't Fisher employees. So, for the IRS, they give different point values: $10 a point, $20 a point, $54 a point.

Asked how he is valuing his personal treasure, Fisher says he's not. His accountants do that.

Investors assign their own values, depending on the circumstances. These days lots of the treasure is going to small museums and colleges. In return, the donors take tax write-offs for making charitable contributions.

Some investors are also donating their Treasure Salvors stock and taking write-offs. They value it differently: $4 a share, $12.50 a share, $15 a share, $40 a share, $100 a share, $169 a share.

Shares in Fisher's company are different from shares in General Motors. His stock is not traded on Wall Street, nor is it listed on any exchange.

"Once you let stock go out," Fisher says, "it seems to multiply like rabbits."

Fisher says he isn't sure how many investors he has had over the years or how much money they've given him. He says he has handed out treasure to "hundreds of people" who never gave him a dime. Asked who, he says, "I don't think they'd want their names out."

Experts don't agree on values, Fisher says. Take a flower vase Sotheby's, a London-based collector, appraised it for $17,500 he says. Later Christies, another collector, appraised it for $35,000. Then "another group," h says, figured $95,000.

He says he can't remember th name of the other group. Sotheby's and Christies decline comment.

Experts often disagree wit Fisher's values.

Joel D. Coen, a rare-coi retailer in New York, say Fisher's silver bars and coin aren't worth that much.

"People are so gullible," h says. "We're dealing with peopl who have money, and I assum they must have been intelligen to make it, but when they ge out of the parameters of thei knowledge, they're like babes i the woods."

"He doesn't know what he' talking about," Fisher says.

N. Neil Harris, editor of Th Numismatist, says Fisher's coin are genuine but overpriced. " saw a lady buy a $1,200 piece i Mel's gift shop, and I wanted t say, 'Lady, you can get a bette piece in Miami for $300.' "

London jeweler A.P. de Clermont says he looked over 4.8-ounce gold bar. "There wa little doubt it was genuine, but i was very, very crude — a lum of gold.

The jeweler offered $3,000 — double the bullion price.

"I suppose they thought it wa worth more, so we didn't make a deal," he says.

Benedict

Some people say Fisher pumps up the values. "The Fisher factor," they call it.

Debra Benedict got so angry about it that she sued.

She won a 7.3-ounce gold bar in a Fishe treasure contest. Fisher valued at $50,000, but when Benedict, Key West businesswoman, trie to sell it, experts offered her n more than $5,000, she says.

Christies didn't even want t look at the piece. "I'm sorry," Benedict quoted the saleswoma in a deposition. "We're n interested."

Amway, the Michigan-base direct-sales firm, was intereste in a Fisher gold bar. Amwa advertised it for $100,000 — "one of only two in the worl the other housed in the Britis Museum." The British Museu says it doesn't know anythin about a gold bar. No one boug Amway's, and the firm return it to Fisher.

A couple of years ago, Mon magazine tried to untangle son of the confusing numbers an finances. It asked Fisher's peop if independent accountants coul review Treasure Salvors' book The answer was no.

Last year, Treasure Salvo formally dissolved itself. Son shareholders disapproved. Ni of them are suing in Monr County Circuit Court, askir once again for an independe accounting.

Fisher says he's no lawyer, bu his lawyers tell him that suit ha no merit.

Associated Press

Mel Fisher displays emerald-filled jar in May 1986.

THE PEANUT-JAR EMERALDS

What's their true value?

Long before he found the "mother lode" of the Atocha, Mel Fisher prophesied that emeralds would pave the sea floor.

Though no emeralds were listed on the ship's manifest, Fisher was confident he would find them anyway.

On Memorial Day weekend 1986, almost a year after the initial discovery, divers brought up 2,189 emeralds.

Sipping a rum and Coke, Fisher displayed them in a Planter's Peanuts jar to the assembled media. Journalists reported Fisher's estimate of the value: "in the millions."

Steve Williams, a disgruntled diver, now says there was "something really funny" about those emeralds.

"They were all the wrong color," Williams says. Emeralds brought up earlier from the Atocha were darker.

"People joked about it. Whenever a diver saw a broken Heineken bottle, he'd grab it, thinking it might be an emerald."

Fisher says he never suspected anyone of salting his wrecks.

It would be extremely difficult to do, he says, and he can't see why anybody would do it.

He says the press was wrong about the value of the emeralds in the peanut jar.

He also says the press was wrong about some other emeralds in Puerto Rico. In January 1986 — about five months before the peanut-jar emeralds — the English-language San Juan Star reported on a Fisher plan to salvage wrecks there.

Fisher's men gave away "rocks they claimed to be rough emeralds," The Star said. "It was widely known that the emeralds were handed out to promote the place as a diving spot."

"We never passed out emeralds to anyone," Fisher says.

Last year, Fisher's company asked a Colombian emerald dealer, Manuel Marcial, to examine all the Key West emeralds.

Marcial had given Fisher a modern emerald for the "Mel Fisher First Annual Treasure Hunt" in 1985.

All of the emeralds are old, Marcial concluded. "It's a fallacy to think those stones were salted there."

But Marcial could not agree with a million-dollar price tag for the emeralds in the peanut jar. Though he said that some of the earlier, darker stones were extremely valuable, he figured the emeralds in the peanut jar were worth at least $1,800.

Joseph Tenhagen, a Miami emerald specialist, is suspicious about the origin of the emeralds. He wonders why anyone would have been taking so many cheap emeralds back to Spain in 1622.

Marcial replies: "Some Spanish sailors a few hundred years ago probably got taken by the Indians."

The Miami H
5 Sunday, July 19,

THE LAB TESTS:

Coins are authentic, but silver bar is suspect

By SYDNEY P. FREEDBERG
Herald Staff Writer

The research and technology division of Leach & Garner, one of the world's largest manufacturers of fabricated precious metals, says "treasure" investors got from Mel Fisher appears to be authentic — except for one piece they say is suspect.

A small silver bar that a Long Island venture capitalist says Fisher gave him appears to have a residue of "liver of sulfur," a compound contemporary jewelers use to make things look old.

"Personally, I don't think this bar is genuine," said Gregory Raykhtsaum, one of the scientists who analyzed the material.

Fisher said he didn't know anything about the silver bar. "I don't know how they tested it, and I don't care," he said.

At the request of The Miami Herald, Raykhtsaum and Dr. D.P. Agarwal, Leach & Garner's vice president of technology, analyzed the silver bar, a gold bar and eight silver coins. The men's field of expertise is physics, chemistry and the processing of precious metals and alloys.

Three investors provided material for the study. They were the venture capitalist and tax lawyer, Carl Paffendorf of Glen Cove, N.Y.; Maggie Taylor of Fort Lauderdale; and Nancy Smithers of Bettendorf, Iowa.

To check for authenticity, Raykhtsaum conducted nondestructive tests under a scanning electron microscope equipped with energy-dispersive X-ray spectrometers. The microscope scans for impurities and chemical compounds, which can give scientists clues about when a metal was manufactured and the techniques used.

In his report to The Herald, Raykhtsaum, a physicist, said there was nothing about the eight coins to make the scientists suspicious of their origin. The coins consist of silver and a small amount of copper.

Their composition, the scientists said, is common for silver coins and known since the year 1560.

> 'I DON'T know how they tested it, and I don't care.'
>
> **Mel Fisher**

But the harsh, acid process used by Treasure Salvors to clean the coins, Raykhtsaum said in an interview, "attacked" the surfaces of the coins. The process severely etched the surfaces, probably causing them to "lose their original texture."

The scientists also said there is "a high chance" that the gold bar they analyzed is genuine. It has cracks. In the cracks are white particles of calcium, silicon oxide and titanium oxide — compounds that are commonly contained in salt and sand, Raykhtsaum said.

The bar is not pure gold, according to the scientists. It consists of about 10 percent silver — meaning either that it came from an old gold mine or that it was poorly refined.

Unlike the gold bar, the scientists said, the silver bar has no cracks. It has residue of a compound that Raykhtsaum said is not found in the sea. The compound is commonly used by modern jewelers to tarnish jewelry.

In addition, the silver bar has some marks and a round stamp, "which looks like it was purposefully damaged or smeared," Raykhtsaum explained, "as if somebody just didn't want to put the details on the stamp."

"We have some doubts about the silver bar," Raykhtsaum concluded in his report. "We suspect that the bar was 'antiqued' using 'liver of sulfur.' "

Paffendorf, head of a 35-member New York syndicate that invested millions in Fisher's search, said he can't believe the silver bar might be a fake.

"Before I would make any accusations, I would want a couple of more people to test it," said Paffendorf, president of an inves ment company called Vanguard Ventur "Frankly, I don't buy the idea. God know I'm not an expert, but it seems unlikely.

"Why the heck would anyone want counterfeit a silver ingot? They all look li burned loaves of bread when they come o of the ocean."

Fisher said he had "no knowledge" of t silver bar. He said he couldn't see wh anyone "would go through all that troubl of testing his treasure. Handed a copy Leach & Garner's report, Fisher said really didn't know what he needed it for.

Jim Sinclair, the Fisher employee wh preserves the treasure, said he didn't kno what Leach & Garner was talking about. B possibly, he said, the "liver of sulfur" on t silver bar was a "byproduct" of chemica used in Treasure Salvors' cleaning process.

Jack Zbar, president of a Georgia-bas chemicals company called Arrow, w Treasure Salvors' consultant on the cleani process. Zbar said the chemicals used in t cleaning process would not produce t compounds on the silver bar mentioned Leach & Garner's report.

In the report, Raykhtsaum acknowledg that the scientists, who are not numismatis could not be "absolutely sure" about th conclusions without the ability "to destr the samples."

Thomas Eagar, a professor of materi sciences at the Massachusetts Institute Technology, recommended the company The Herald. Leach & Garner, with sales $750 million, employs about 1,000 people. has been in business since 1899.

The firm's technology division agreed conduct the tests for a "nominal fee." $1 Brinks armored trucks delivered the treasu to the lab in Attleboro, Mass., and returned to its owners.

Recently, Leach & Garner made t Guinness Book of World Records. It man factured the world's largest gold coin, 3 pounds, for Canada's Expo '86.

Miami Herald
7/19/87

SHAREHOLDERS: Disappointed by 'dregs,' they demand payoff

By SYDNEY P. FREEDBERG
Herald Staff Writer

> "YOU CLAIM to have recovered $100 million in treasure and you paid stockholders 5 cents a share. ... It was an insult and amounted to no more than a slap in the face."
>
> George Burrows, angry stockholder

From the early days of Treasure Salvors Inc., Mel Fisher told the world that someday — any day — he would find "the big pile." To investors, he advertised: "Today's the Day."

He would wrap gold chains around prospects' necks, charm them and promise his loyal employees, "It's real close now. I can smell it."

In 1980, Fisher announced his first big find — the Atocha's 17th Century sister ship, the Santa Margarita. His people valued it, alternately, at $40 million, $30 million and $20 million.

An angry stockholder, Bernice Feild, wrote in a letter that shareholders got only $153,000 of treasure — "the dregs of the find ... musket balls, fragments and poor-quality coins."

George Burrows, another angry stockholder, wrote to Fisher's wife: "You claim to have recovered $100 million in treasure and you paid stockholders 5 cents a share. ... It was an insult and amounted to no more than a slap in the face."

Burrows, who used to work for Fisher, sued for breach of contract in Monroe County. He lost, he says, because the statute of limitations ran out.

The next lawsuit against Fisher may well come from Bernice Feild, a retired real-estate broker from Del Mar, Calif. She owns 4 percent of Treasure Salvors.

Nineteen months after Fisher's announcement of the discovery of the Atocha, Feild started collecting money for a lawsuit from the company's 650 shareholders. She says 132 stockholders have sent her $40,000.

In a half-dozen letters typed in italic script, she said, among other things: "We cannot find out who owns our treasure. We cannot find out how much was given for it. Even our own accountant doesn't know what is going on."

Fisher fired back, denouncing Feild for inaccuracy, "misinformation and innuendos" and for "calling me a liar."

He threatened to sue her for libel and warned against any litigation against him.

He wrote to stockholders: "What [Feild] really wants is for you to finance a 'fishing expedition' to investigate Treasure Salvors' operations during the past 10-15 years. This would be a very expensive fishing expedition, and I can assure you that it would accomplish nothing."

The lawsuit "would not do anything except ... make a lot of lawyers and accountants wealthy at your expense."

The latest entry in the letter war is from a phantom stockholder — one "J. Bradly," identity unknown, address unknown — who criticized Feild's "vendetta." The mystery stockholder wrote unkind things about her personal life.

In a letter to his investors, Fisher wrote: "Just hang in there. This year's the year you've been waiting for!"

Carl Paffendorf, a venture capitalist and tax lawyer from Glen Cove, N.Y., is doing just that. He represents 35 New Yorkers who gave Fisher $3.5 million. Publicly, Paffendorf says his investors are "reasonably satisfied."

Privately, according to Feild, they wanted Fisher to buy back some of their treasure for $2.2 million.

They didn't. Neither Paffendorf nor Fisher wants to talk about it.

Paffendorf admits he is no expert in treasure. What he is expert at is finding tax-deductible investments for high rollers — write-offs that the U.S. Congress is making more and more difficult.

In the 1970s, Paffendorf and his good friend, the late CIA Director William Casey, worked together on some tax projects. Casey didn't buy any Fisher stock.

Fisher's side generally wins at the stockholders' annual meetings. He and his family control 30 percent of the stock.

At one meeting, stockholder Norman Johnson made a motion for an accounting of all the treasure. He says his motion passed.

Fisher says he opposed an accounting because his staff was in the middle of a big coin-cleaning process. An accounting "would have disrupted everything," he says. Besides, accountings are "very, very costly."

Johnson's motion did not appear in the minutes. So at the next stockholders' meeting, he asked why.

Judy Sojourner, Fisher's personal secretary, tape-recorded the session. But, it developed, her recorder "malfunctioned" while Johnson spoke.

Like many of Fisher's people, Sojourner is devoted to him — and protective. "I would imagine the president of IBM doesn't know everything that's going on in the company, either," she says.

Fisher's side generally wins in the courtroom, too.

Once, Fisher and another treasure hunter, Bobby Jordan, laid claim to the same shipwreck. This was five years before Fisher says he found the "mother lode" of the Atocha.

At the time, Jordan said he marked the spot of the "mother lode" on a map for Fisher as they sat in a retired naval officer's house.

Jordan lost a lawsuit. U.S. District Judge James Lawrence King not only ruled for Fisher, he told Jordan he had to pay Fisher's $75,000 legal fee.

"If I didn't pay, I would have lost my boat," Jordan says. So, to avoid the fee, he signed a "general release" form. He gave up his legal rights "from the beginning of the world."

Fisher's lawyer, David Paul Horan, says such a "general release" is a bit like securing a loose cannon.

"If you ever had one of those cannons roll around, it would squish everyone on deck," Horan says.

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July 19, 1987

NATIONAL GEOGRAPHIC:

Fisher's friend

For Mel Fisher, the National Geographic Society is his "Good Housekeeping Seal of Approval."

That's the opinion of Robert Daley, author of *Treasure*, a 405-page account of Fisher's search for the Atocha.

The society and its famed magazine gave Fisher credibility long ago. It published two articles about his exploits and filmed two television specials.

What some investors don't realize is that Eugene Lyon, National Geographic bylined writer, and Don Kincaid, National Geographic contract photographer, were also working for Mel Fisher. In fact, they eventually became members of his board of directors.

The society's underwater photographs were sometimes staged, people familiar with Fisher's expeditions now say.

"They'd take the treasure back out, so they could photograph it looking as if it was being recovered," says Frank Pitale, a boat captain who worked for Fisher for a year.

"They'd just bring it to a place where the water wasn't so murky and you didn't have swirling sand. Otherwise, you would have seen nothing."

Kincaid acknowledges that he sometimes re-enacted pictures. But items were always returned to the spot where they were actually found, he says. Both he and the boat captain say they think the technique is proper. Fisher agrees.

"It's very hard to get a good picture while it was really happening," Kincaid says. "The pictures were all illustrative of what actually happened."

Robert Patton, an illustrations editor at the magazine, says he didn't think staged pictures were published. "We don't run that kind of picture," Patton says.

William Graves, the magazine's senior assistant editor for expeditions, declines comment on the society's financial interest in Fisher's ventures, but he says he doesn't see "any harm" in paying for information from "authorities."

Some journalists say they should not cover subjects in which they have a financial interest because of the appearance of bias.

Lyon

Kincaid, elected to Treasure Salvors' board in 1978, says the salary he received from Fisher and National Geographic are "between me and the IRS."

He says he didn't receive a salary from Fisher while receiving a salary from National Geographic.

Adamantly, Lyon denies any conflict of interest. "I have a perfect right to sell a story to National Geographic."

Lyon says he can't recall when he was elected to Mel Fisher's Treasure Salvors' board, but he thinks it was "about 1980." He refuses to say how much Geographic paid him for the articles. Nor will he comment on his financial interest in Fisher's operations.

He says only that he donated his Fisher stock to a college.

In a book Lyon wrote about the Atocha, *The Search for the Atocha* — "the exciting true story behind the $300 million treasure find" — he portrayed National Geographic as a "powerful ally."

Lyon wrote: "Despite the rumors of 'salting,' the National Geographic was satisfied that a good story might develop out of the Marquesas search, and contracted with Treasure Salvors for exclusive rights to a magazine article and a television special."

In his book *Treasure*, Daley wrote that Fisher "dropped not only gold and press clippings on potential investors' desks, but the National Geographic contract as well."

Fisher says he never showed a National Geographic contract to anybody. Daley's book, he says, contains "several hundred mistakes."

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INVESTORS:
A few of their stories

JIM VONDERHAAR

$40,000 investor

A 66-year-old handyman from Cincinnati, sold a boat harbor and a saloon to invest. He says he got 230 silver coins, six silver bars, three gold bars and a six-foot chain.

"If you go to get it appraised, the silver coins are worth about $6 each. These coin dealers, they're jerks. They don't even know what the coins are. I just took it all back down to Key West, and I'm trying to sell it where the people know what they're talking about. . . . If I get nothing, and leave it to my heirs or creditors, I'll still not feel cheated. I've had 15 years of enjoyment. . . . Maybe somebody will realize the historical value in 25 years."

NANCY SMITHERS

$1,000 investor

Sixtyish, a retired schoolteacher from Bettendorf, Iowa. She says she got nine silver coins, a silver bar and a "big hunk" of copper.

"I think they're overvalued. My silver bar doesn't seem to have the markings on it like the ones in the museum. . . . Even if I don't get the value, I still have it for my scrapbook . . . Maybe people don't want to know the truth about the value. They want to keep the dream. . . . We did it as a fun thing. It's a good story to tell."

JIM LINDSEY

$1,000 investor

A 42-year-old coal miner from Taylorville, Ill. He says he got a 52-pound copper ingot, four silver coins and a ballast stone.

"I knew what I was getting into. I had a lot of fun with it. I'm not too unhappy with the deal. . . . The copper ingot is worth 50 cents a pound. The coins are being sold for $400 to $500 each in Mel's museum. I could probably get $65 to $100 for each. . . . Now, if I'd invested $10,000 and got 10 copper ingots and 40 silver coins, I probably would have been angry."

VIRGINIA DEARDORFF

$3,000 investor

Lawyer from Parkton, Md., invested "no more than" $3,000 with her husband, a dentist. They are suing.

"We never tried to get anything independently evaluated. . . . We received a few coins. They're kind of bent. . . . There were a few artifacts, sort of hunks of metal. We don't have anything that looks like gold or silver. It looks more like junk. . . . We don't really know where all the treasure went. We're asking for an accounting to find out. We can't get anywhere with Mel Fisher. He's got a lot of charisma, but he's very goo at not answering our questions."

MAGGIE TAYLOR

$11,000 investor

A 63-year-old owner of a Fort Lauderdale gift shop. Fisher's people said her $11,000 investment would make her a millionaire. Over the years, she says she got four silver bars, a gold bar, a cannon and close to 1,000 coins. "I got a larger apartment. I wanted a Jag, but I didn't get it. . . . We all know the value is exaggerated. You can probably get about half as much as they say. it's in the eye of the beholder. I certainly have no complaints."

She consigned most of he treasure to Fisher, and he sold some of it. Fisher's people usually take a 30 percent cut.

"They had an offer of $50,000 for all the silver ba — that's about meltdown value, so I turned it down. I' not gonna let it go for peanuts."

RICHARD POWELL

$2,000 investor

A 50-year-old history teacher from Pottstown, Pa., who charged the $2,000 on his American Express card at Fisher's museum. He says he got a silver bowl and 20 silver coins.

"I haven't had it appraised. I've put together an exhibit. go out lecturing to service clubs, and they pay me a fe . . . I've had a lot of publicit I've been on radio and television, and I'm looking this as sort of a retirement business. . . . Anyone who knows about limited partnerships knows you don't make a fortune."

MEL FISHER'S REPLY

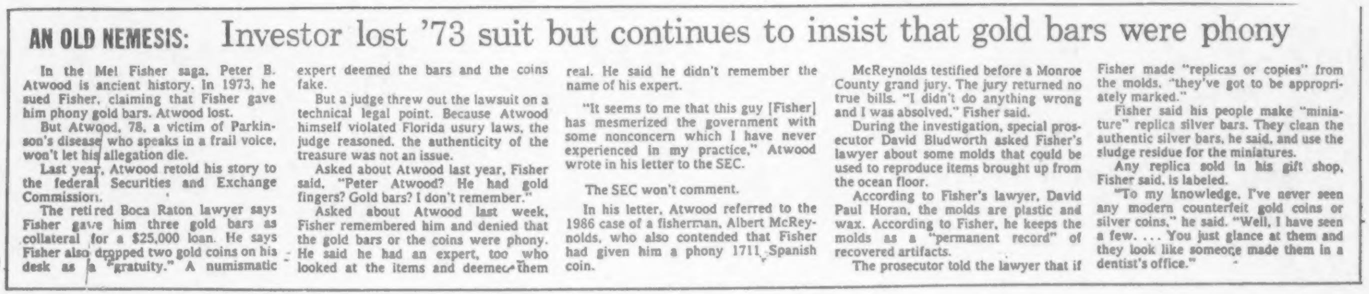
Obviously, Fisher responds, the history teacher is "in ecstasy."

Fisher says he tries to answer everybody's questions honestly. He says coin dealers always "try to buy for rock-bottom prices." He says some of his investors will receive "more later and more later and more later."

He says, "We still don't know what the values are," and he hopes an auction in Las Vegas will give everyon a better idea. Most of his investors, he says, "weren' in it for money."

And the Iowa woman's copper ingot, he says, probably is worth a lot as a doorstop and a conversatic piece.

Miami Herald
July 19, 1987



AN OLD NEMESIS: Investor lost '73 suit but continues to insist that gold bars were phony

In the Mel Fisher saga, Peter B. Atwood is ancient history. In 1973, he sued Fisher, claiming that Fisher gave him phony gold bars. Atwood lost.

But Atwood, 78, a victim of Parkinson's disease who speaks in a frail voice, won't let his allegation die.

Last year, Atwood retold his story to the federal Securities and Exchange Commission.

The retired Boca Raton lawyer says Fisher gave him three gold bars as collateral for a $25,000 loan. He says Fisher also dropped two gold coins on his desk as a "gratuity." A numismatic expert deemed the bars and the coins fake.

But a judge threw out the lawsuit on a technical legal point. Because Atwood himself violated Florida usury laws, the judge reasoned, the authenticity of the treasure was not an issue.

Asked about Atwood last year, Fisher said, "Peter Atwood? He had gold fingers? Gold bars? I don't remember."

Asked about Atwood last week, Fisher remembered him and denied that the gold bars or the coins were phony. He said he had an expert, too who looked at the items and deemed them real. He said he didn't remember the name of his expert.

"It seems to me that this guy [Fisher] has mesmerized the government with some nonconcern which I have never experienced in my practice," Atwood wrote in his letter to the SEC.

The SEC won't comment.

In his letter, Atwood referred to the 1986 case of a fisherman, Albert McReynolds, who also contended that Fisher had given him a phony 1711 Spanish coin.

McReynolds testified before a Monroe County grand jury. The jury returned no true bills. "I didn't do anything wrong and I was absolved," Fisher said.

During the investigation, special prosecutor David Bludworth asked Fisher's lawyer about some molds that could be used to reproduce items brought up from the ocean floor.

According to Fisher's lawyer, David Paul Horan, the molds are plastic and wax. According to Fisher, he keeps the molds as a "permanent record" of recovered artifacts.

The prosecutor told the lawyer that if Fisher made "replicas or copies" from the molds, "they've got to be appropriately marked."

Fisher said his people make "miniature" replica silver bars. They clean the authentic silver bars, he said, and use the sludge residue for the miniatures.

Any replica sold in his gift shop, Fisher said, is labeled.

"To my knowledge, I've never seen any modern counterfeit gold coins or silver coins," he said. "Well, I have seen a few. . . . You just glance at them and they look like someone made them in a dentist's office."

WOODEN BOAT MAG.

Tarnished Gold

Dear Jennifer,

It is more than a little disheartening to read, in the pages of *WoodenBoat*, an article more suited to *Soldier of Fortune*, because I've always assumed—naively, perhaps—that both *WoodenBoat*'s editors and readers believed, in general, that our maritime past is something we can learn from and, for that reason, is worth treating with some care and respect. Beyond that, there's the matter of stewardship: in other words, the responsibility to do the best job we can (even if we make honest mistakes) in making sure that our children and grandchildren have something to learn from as well.

When one reads that Bill Schwicker, working with Mel Fisher's treasure hunters, went on the wreck of ATOCHA and "blew a hole, and by nightfall we had 3,000 coins," no question about it—there has to be a certain grudging admiration for the fast-buck artists with enough sheer gall to grab the loot and worry later about what they destroyed in the process! An archaeological axe-murder enshrined in the pages of *WoodenBoat*.

There is, to be sure, honest disagreement among archaeologists over the extent to which cooperation between archaeologists and treasure hunters is possible. Based on the reports I have seen so far from ATOCHA, and comparing them with the work done with more scholarly intent by people such as Dr. George Bass on other wrecks, it is impossible to give the ATOCHA "archaeology" very high marks. It is also very disheartening to see artifacts recovered by treasure hunters deteriorate for lack of proper treatment. An object's historical value can't always be measured in the auction room.

Mr. Schwicker refers to "archaic" legislation with which his folk-hero salvors have had to contend. It should be pointed out that such legislation, both present and proposed, is an attempt to make certain that our cultural heritage is explored and managed in the best interests of all of us, not exploited for the profit of a few.

I should add that while I am not a professional archaeologist, I have been, since 1982, part of the team recovering the Maine-built clipper ship SNOW SQUALL from the mud of Stanley Harbour in the Falkland Islands. The Snow Squall Project is an example of the often tedious, usually cold, and eventually rewarding work that adds to our present knowledge while benefiting the future.

Nicholas Dean
North Edgecomb, ME

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The videocassette "Classic Speedboats of Lake Tahoe" is distributed by the Sierra Boat Company, Inc. (P.O. Box 69, Carnelian Bay, CA 95711) and not by its producer, Transform Video, Inc., as previously published.

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NOTICE

To purchasers of plans for the Maxwell Cutter, designed by Kaufman & Ladd (now Kaufman & Associates): The designer of the Maxwell Cutter has revised some of the specifications for the construction and rigging of the boat. If you have purchased plans, but have not heard from the designer concerning these revisions, please get in touch with us. If you have been contacted recently, there is no need to respond. For further information, write WoodenBoat Plans, P.O. Box 78, Brooklin, ME 04616.

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Sub Committee on Public Lands
Senate Energy and Natural Resources Committee
Washington, DC 20510

October 9, 1987

Re: S.858 Abandoned Shipwreck Act of 1987

Dear Sirs,

Before passing the Abandoned Shipwreck Act, or any such related Act, one eminently important aspect should be taken into consideration. This is the right of access by the American public.

As an example of a counterproductive measure, consider my own battle with the Monitor National Marine Sanctuary. The Monitor is a shipwreck of intrinsic historic value to the people of this country, yet the MNMS has specifically denied me access to the site under threat of fine and Coast Guard arrest, despite the fact that my only interest in visiting the Sanctuary was to take pictures. MNMS now has total control over the Monitor, and decides whom they will allow to see it.

You can see how insidious these laws can become once blanket authority is given to state or federal authorities. Suppose the National Park System suddenly decided to build a great wall around Yellowstone National Park, and would not let anyone even see the Park, much less take pictures of it? This is what can happen to each and every shipwreck once control is given to a governmental agency.

The purpose of government is to protect people, not to rule them. Denying access to shipwrecks is tantamount to closing down all the nation's parks, because it takes away from the public what is rightfully theirs. We as a democracy can only survive as long as we maintain democratic rule. Please do not let this happen.

Sincerely,

Gary Gentile

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DISTRICT OF COLUMBIA BAR
[+] ALSO ADMITTED NEW JERSEY

October 13, 1987

Public Lands Subcommittee
Senate Energy & Environment Committee
United States Senate
Washington, D.C. 20505

Re: S.858, Abandoned Shipwreck Act of 1987

Dear Senators:

You are now considering a bill which would grant title to all shipwrecks -- whether known or as of yet undiscovered -- to the state in whose waters that wreck lies. Concomitantly, the bill abolishes over 200 years of federal Admiralty jurisdiction for suits for salvage rights and/or title to such abandoned shipwrecks.

In this, the Constitution's Bicentennial year, it is important to remember why the Framers gave exclusive admiralty jurisdiction to the federal judiciary. The reason was uniformity for vessels of various flags calling on any U. S. port concerning matters of navigation, commerce, seaworthiness, and even salvage. Article III, Section 2 provides that, "the judicial power shall extend to all cases of admiralty and maritime jurisdiction". Surely there is nothing more maritime in nature than the salvage of a shipwreck from the ocean floor.

I am particularly interested in this topic, as I have been a shipwreck diver for more than ten years, and an avid amateur archaeologist who has organized expeditions which have successfully researched, discovered, and interpreted ancient shipwreck sites, and an attorney who has been directly involved in shipwreck salvage litigation and legislative drafting while representing, at various times, the interests of the state, private salvors, and the sport diving public. In the course of such representation, it has become increasingly clear to me that by far the largest interest group directly affected by this legislation -- the sport diving public, which numbers in the millions -- has had the least input.

The fact of the matter is that S.858, if enacted, would give each state the unfettered discretion to place any and all shipwreck sites off limits to the diving public, a concept which is anathema to existing admiralty law. Although the bill purports to assert ownership to historic shipwrecks, in fact it asserts ownership to all shipwrecks, as each and every one of them is, to some extent, embedded in the bottom. S.858 is more than a historic preservation statute: it is an assertion of wholesale governmental ownership of lost and abandoned property -- whether or not the state even knows whether the shipwreck even exists!

In a case which has been given absolutely no mention by proponents of S.858, the diving public won an unequivocal right of access to any shipwreck site which they had been freely and openly diving by contesting the claim of a commercial salvor to a popular sport diving wreck. Located at the mouth of Delaware Bay and known popularly as the "China Wreck", the site had been freely and openly dived by thousands of members of the public who had recovered thousands of pieces of 19th century English ironstone porcelain from her wreckage. When a private salvage concern laid claim to the site with the intention of appropriating all of her cargo while levelling the wrecksite, the sport diving and fishing public banded together and formed an organization, "Ocean Watch", which contested that commercial salvage claim.

Ocean Watch argued that the public was, in effect, the first salvor of the China Wreck and eventually prevailed and permanently enjoined any commercial salvage of the China Wreck. In so doing, the admiralty court -- whose jurisdiction in such a case would be abolished by S.858 -- established a precedent which recognized the public's incontrovertible right to continue to dive and recover artifacts from wrecks which they had been using and enjoying in the past. Indian River Recovery Company v. The China, 108 F.R.D. 383 (D.Del. 1985), 648 F.Supp. 141 (D.Del. 1986).

It is important to note that S.858 contains no concrete right of public access to historic shipwrecks which federal admiralty law explicitly recognized in the China Wreck decision. During their hearings on S.858 on September 28, 1987, the Senators on the Public Lands Subcommittee dismissed the notion that a state might bar the diving public from access to its shipwrecks. In fact, this has, and continues to, occur.

The last two states to attempt or to actually enact comprehensive legislation concerning shpwrecks were Wisconsin and Georgia. In Wisconsin, a bill was introduced into the state legislature without any input from the sport diving public which would award title to 300 "historically important" shipwreck sites in state waters, from which the public would only be granted access pursuant to a permit. The problem with the measure was that there were only 300 known shipwreck sites known in state waters;

the bill would effectively prevent sport divers from visiting any of them! When the diving public got wind of what had been proposed behind their backs, an unanimous uproar resulted in the bill's withdrawal.

In Georgia, however, the opposition of the diving public, to an even more restrictive bill, was not enough to prevent its passage. That bill mandates a permit for the recovery of any artifact from any shipwreck in state waters which is even suspected of being historic. The law provides that a permit shall only be issued to educational or scientific institutions, thereby prohibiting the sport diving public from pursuing an activity which they had been freely and openly enjoying in the past. The state went so far as to arrest three divers who had conducted five years' of archival research, underwater archaeology, and artifact preservation and public display of items recovered at great hazard from the Confederate blockade runner CSS Nashville. Working in pitch black waters and strong tidal currents, the divers even published a book (at their own expense) detailing the vessel's history and their findings. Such voluntary research in the public interest is now prohibited in Georgia. But such a restrictive state ownership scheme would be endorsed by Congress should S.858 become law.

As the state is insufficiently funded to police the resource which they have yet to even inventory, what has resulted in Georgia has not been the protection of shipwrecks from what was perceived to be uncontrolled looting, but rather an increase in such activities and a greatly heightened sense of secrecy among divers as to where they are diving and what is being recovered. Any cooperation between the public and the state which had existed before the measure was adopted has been effectively destroyed; the resulting sense of distrust has prevented the state from learning of the existence of any historic shipwrecks discovered by its citizens.

Thus, the right of access is, in fact, a real issue. To put the matter in a prespective which Bill Bradley, the Senate sponsor of S.858 can understand, it is as if the federal government were to award title to the state of all basketball courts which lie within that state's territory. A citizen would then require a permit from the state in order to play basketball on its court. I am sure that even non-basketball players would find such a measure repugnant: perhaps the Subcommittee can better understand how an all-encompassing shipwreck ownership scheme fails to appeal to a sport diver.

The proponents of S.858 have offered absolutely no examples of the looting and/or destruction of historic resources which would justify universal governmental assertion of title to ship-private salvor to even state a claim to a shipwreck of historic importance, that salvor must demonstrate both his ability and willingness to maintain detailed archaological provienance data. Cobb Coin Co. v. The Unidentified Wreck, 525 F.Supp 181, 223 (S.D. Fla., 1981). Although the proponents of S.858 cry crisis, they have yet to substantiate their unfounded allegations. The simple truth is that it is in a salvor's economic interest to accurately record the archaeological information recovered from historic shipwrecks.

State ownership of shipwrecks is not a panacea for historic preservation. In my home state of Delaware, the state's title to H. M. S. De Braak was undisputed. Although a state-permitted salvage operation was subject to an admiralty action, the federal judge gave the state complete discretion to oversee the archaeological aspects of the salvage operations. Despite this, the state allowed highly controversial methods to be employed which resulted in substantial damage to the partial hull structure which was lifted to the surface. Without sufficient finds with which to properly preserve the fragile waterlogged wooden remains of the DeBraak, the state is left with an albatross -- and clear evidence that just because it owns the DeBraak, there is no assurance that such historic shipwrecks will be properly protected or preserved.

The true enemy of shipwreck preservation has not been addressed by this bill, as it is impossible to regulate. It is the ravages of the marine environment which continuously degrade and destroy our shipwreck resources. I know, because I watch my favorite wrecks deteriorate on an annual basis. This is the real enemy against which action must be taken -- not by a wholesale assertion of ownership, but by encouraging the scientific exploration and recovery of historic shipwrecks and their cargoes through the retention of the long and august admiralty jurisprudence which ensures that all parties concerned with shipwreck archaelogy and salvage are heard and their interests accommodated appropriately. The legislative dismantling of this effective system only promotes erratic shipwreck "management" among the states and rather than promoting their preservation, will only accelerate the unscientific excavation and disturbance of historic shipwreck sites.

Sincerely,

Peter E. Hess

Peter E. Hess

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

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Washington, D.C. 20001

(202) 624-5465

Testimony of the National Conference

of State Historic Preservation Officers

Senate Subcommittee on Public Lands, National Parks and Forests

S. 858

September 29, 1987

Abandoned Shipwreck Act of 1987

The National Conference of State Historic Preservation Officers supports S. 858. The NCSHPO is the association of officials who carry out, for the Secretary of the Interior, the national program for the preservation of all historic resources. The SHPOs' ability to manage historic shipwrecks for preservation and recreation purposes is currently frustrated by U.S. Admiralty Law, which clouds the ownership of historic shipwrecks. The uncertainty of ownership in many States has inhibited effective activities to preserve historic shipwrecks. S. 858 will resolve the ownership question and allow States to concentrate on adequate management, without fear of litigation. Removing the ownership issues will take the important first step.

The NCSHPO support of the Abandoned Shipwreck Act has already been aptly stated by Senator Bradley in his remarks preceding the introduction of the bill, printed in the Congressional Record of March 26, 1987 (copy attached).

The NCSHPO also supports the access to shipwrecks for recreational and educational purposes. On June 29, 1987, the NCSHPO adopted the following resolution.

> NOW THEREFORE BE IT RESOLVED that the NCSHPO calls on the U.S. Congress to ensure that any law it enacts concerning abandoned shipwrecks in State waters guarantees the right of access to such shipwrecks for recreational and educational activities so long as such activities do not include the excavation or removal of artifacts, and so long as such activities do not result in damage to historically significant shipwreck sites, and so long as such activities are not in conflict with applicable health and safety standards.

The NCSHPO supports, and has supported for five years, the provisions of this bill. The NCSHPO has one technical correction (Section 6(a)(3)) dealing with the method of determining whether a shipwreck is historic (National Register eligible). The NCSHPO believes the existing system for evaluating the significance of historic properties (which works for every other historic property type) should remain in place for shipwrecks. The SHPOs should retain the ability to assess whether or not a shipwreck is historic (National Register eligible). The SHPOs have the resource base against which to measure significance and have the ability to render decisions quickly. While the Secretary of the Interior is certainly qualified to make that assessment, written Secretarial determinations on every potential historic shipwreck will only delay and complicate the preservation process.

With this technical correction, the NCSHPO urges the passage of S.858.

Eric Hertfelder
Executive Director

sources were to be treated as separate persons for payment limitation purposes in adopting Section 636 of P.L. 99-951 during the 99th Congress. The bill that you have authored clarifies this intent by providing that family members treated as separate units prior to December 31, 1985 will continue to have that status through 1990 crops.

Agriculture is suffering from the most difficult economic circumstances encountered in several generations, and it is vital that farm families are assured that they can share their land, labor, equipment and capital without penalty to endure this period of financial stress.

We are pleased to endorse this legislation, and we look forward to working with you in the interest of the nation's farm families.

Sincerely yours,

James W. Miller,
President.●

By Mr. QUAYLE (for himself, Mr. Pell, Mr. Hatch, Mr. Stafford, Mr. Thurmond, and Mr. Cochran):

S. 857. A bill to amend the Bilingual Education Act to make Federal financial assistance for children of limited English proficiency without mandating a specific method of instruction, to encourage innovation at the State and local level through greater administrative flexibility, to improve program operations at the Federal level, and for other purposes; to the Committee on Labor and Human Resources.

BILINGUAL EDUCATION ACT AMENDMENTS

● Mr. QUAYLE. Mr. President, today I am introducing along with Senator Pell and several other colleagues on the Education Subcommittee, a bill that reflects a compromise from my earlier bill to increase the set-aside for funds going for alternative instructional educational programs under the Bilingual Education Act from 4 to 25 percent.

This bill is the result of negotiations among the members of the Labor and Human Resources Committee and will be considered by that committee in early April.

This bill is a good compromise and will permit greater flexibility in funding alternative instructional programs, but still meets the concerns that were raised about removing the set-aside for funding transitional bilingual education programs.

The bill also provides that students must exit a Federal bilingual education program of any type after 3 years; that priority for funding under the alternative programs should be given to small schools districts or school districts with many languages; that current recipients will not have their grants changed as a result of the increase to 25 percent; and it includes the language on technical amendments and statement of purpose from my earlier bill, S. 383.

Mr. President, I ask unanimous consent that the text of this compromise bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 857

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Bilingual Education Act Amendments of 1987".

PURPOSE

Sec. 2. Section 703(a) of the Bilingual Education Act (20 U.S.C. 3221 et seq.) (hereafter in this section referred to as the "Act") is amended—

(1) by redesignating clauses (4) through (14) as clauses (5) through (15), respectively; and

(2) by adding after clause (3) the following new clause:

"(4) that, regardless of the method of instruction, programs which serve limited English proficient students have the equally important goals of developing academic achievement and English proficiency;".

FUNDING FLEXIBILITY

Sec. 3. Section 702(b) of the Act is amended—

(1) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve 25 percent for special alternative instructional programs and related activities authorized under this Act.";

(2) by striking out "75 percent" in paragraph (4) and inserting in lieu thereof "60 percent"; and

(3) by adding at the end thereof the following new paragraph:

"(5) For fiscal year 1988, the reservation required by paragraph (3) shall not result in changing the terms and conditions of any grant to which section 721(d)(1)(C) applies.".

PERIOD OF PARTICIPATION IN BILINGUAL PROGRAMS

Sec. 4. Section 721(d)(1) of the Act is amended by inserting at the end thereof the following new subparagraph:

"(E) No student may be enrolled in a bilingual program for which a grant is made under subsection (a)(1), (a)(2), or (a)(3) of this Act for a period of more than three school years, or its equivalent, as determined by the Secretary, beginning after September 30, 1987.".

PRIORITY

Sec. 5. Section 721(g) of the Act is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) An application for a grant under subsection (a)(3) of this section may receive priority if the application is made on behalf of small school districts or on behalf of local educational agencies having schools which many languages are represented.".

TECHNICAL AMENDMENTS

Sec. 6. (a) Section 703(a)(13) of the Act is amended by striking out "areas of high concentrations of persons" and inserting in lieu thereof "individuals".

(b) Section 721(b) of the Act is amended—

(1) by striking out the paragraph designation "(1)"; and

(2) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(c) Section 721(f)(7)(C) of the Act is amended by striking out "and with" and inserting in lieu thereof "with".

(d) Section 733 of the Act is amended by striking out the subsection designation "(a)".

EFFECTIVE DATE

Sec. 7. The amendments made by this section shall take effect on July 1, 1987.●

By Mr. BRADLEY (for himself, Mr. Pell, Mr. Hecht, Mr. Graham, Mr. Bentsen, Mr. Stafford, Mr. Inouye, Ms. Mikulski, Mr. Chiles, Mr. Lautenberg, Mr. Chafee, and Mr. Gramm):

S. 858. A bill to establish the title of States in certain abandoned shipwrecks, and for other purposes; to the Committee on Energy and Natural Resources.

ABANDONED SHIPWRECK ACT

● Mr. BRADLEY. Mr. President, today I am introducing the Abandoned Shipwreck Act of 1987. I am pleased to have as cosponsores of this legislation Senators Pell, Hecht, Graham, Bentsen, Stafford, Inouye, Mikulski, Chiles, Lautenberg, Chafee, and Gramm.

This bill provides for State management of historically valuable shipwrecks found in State waters. Because of recent court decisions, these irreplaceable cultural and recreational resources remain prey to commercial treasure salvors, who can operate beyond the bounds of Federal or State oversight. Our bill would allow States to oversee excavation and ensure access to sport divers—at no cost to the Federal Government.

The fundamental problem addressed by this bill is one of public responsibility. Although certain States—for example, Florida and Texas—have stepped in to assert jurisdiction on shipwrecks within the 3-mile coastal region, their legal authority over these wrecks is by no means assured.

In the United States, modern shipwrecks generally fall within the purview of admiralty law, which places the matter of all shipwreck salvage within the Federal, not State, jurisdiction. Under admiralty law, if a ship is judged by the courts to be in a condition of marine peril and a salvor can identify the wreck and prove he has the wherewithal to salvage it, the court may award him the right to do so—despite State laws to the contrary.

Since the passage of the Submerged Lands Act of 1953, States have held title to the lands and natural resources within 3 miles of their coast. Since this act, 25 States have passed laws affecting abandoned historic shipwrecks. However, a series of court cases have thrown into doubt both Federal and State jurisdiction. The issue boils down to whether historic shipwrecks are abandoned ships in marine peril or natural resources.

The United States is the only country in the world with a substantial number of historic shipwrecks that does not have a Federal law recognizing the importance of preserving some of these sites. There is no Federal law requiring orderly and archeologically correct excavation when salvage does take place. Instead, a *finders-keepers* principle applies to all shipwrecks in our waters. While this rule makes sense in matters of ongoing maritime commerce, it is as obviously inappropriate for underwater archeological sites as it would be for ancient ruins on land. Under the current system, Federal courts—sitting in admiralty—have substantial policymaking power, which has resulted in uneven judgments about the historical value of shipwrecks.

Let me illustrate what is at stake with two examples. My own State of New Jersey has a long and varied coast with a fair share of underwater archeological sites. Recent research has discovered a treasure trove in Crosswicks Creek, near Bordentown: the remnants of a 22-vessel fleet destroyed by the British in 1778. These vessels include river craft, coasters, gunboats, and an 18-gun privateer. It was not a salvor, but J. Lee Cox of the Philadelphia Maritime Museum who identified the wreck sites through documentary research.

In 1984, Cox and an amateur underwater archeologist, Don Stokes, visited the site and discovered two wrecks. In 1986, news that Interstate 295 would bridge Crosswicks Creek near the wreck sites led the Philadelphia Maritime Museum to undertake a survey of the creek. Five more potential wrecks were located, and the best preserved wreck was recorded. It is a colonial coaster designed for speed. Buried in a mud bank, about 60 percent of the hull remains intact. At extreme low tide, many construction details can be observed including a double-planked hull. The inner planking of white oak is protected from worm attack by a layer of pine tar and horse hair and an outer sheathing of pine. With the exacting curiosity of a builder of miniature ships, Stokes has drawn a plan and profile of the vessel. Buried contours have been carefully measured using a hydraulic probe.

So far, so good. The Crosswick Creek wrecks have been identified through the fruitful cooperation of professional and amateur archaeologists, and the sites have been protected from accidental destruction during highway construction. But much could go wrong. In the absence of protective legislation, the Crosswick Creek wrecks could be destroyed by the clumsy curious, or exploited by a commercial salvor.

Just how disastrous a project can become is well illustrated by the fate of the steamer *New Jersey*, a wreck identified and documented by a talented group of amateur underwater archaeologists in 1975. The *New Jersey* was built in Baltimore in 1862 for the Trenton Transportation Co. The vessel is one of the last of the bay steamers to combine sail and steam, and one of the first to employ a screw propeller. After service in the Civil War, the vessel was sold to the Old Bay Line of Baltimore. On an 1870 voyage, laden with 750 tons of freight, the vessel sank in the Chesapeake off the mouth of the Choptank River. Most of the vessel was quickly buried in silt. In 1975, Nautical Archaeological Associates, an organization of amateur archeologists, carefully recorded the wreck, removed a small sample of artifacts, and deposited the artifacts in three public museums. Unfortunately, at this point the parallels with the Crosswicks Creek wrecks end. In 1978, the wreck location was published by the National Oceanic and Atmospheric Administration and, starting in 1982, the destruction of the unprotected wreck began.

The cargo of the *New Jersey* was in large part composed of perishable foodstuffs. But enough of it was of water resistant objects to have furnished several museum galleries. The cargo included crate after crate of glassware and ceramics, and at least one crate of music boxes. Here was an entire time capsule from 1870. Since 1982, the wreck has been repeatedly assaulted by souvenir hunters. Mechanic dredges have been used on the wreck. Since August 1985, one hold has been emptied to the bottom, and the bay floor has been so altered that current and marine organisms are combining with man to destroy the remainder of the wreck. The looting and loss of this wreck is a blow both to the historical archeologist and the sport diver.

The development of technology in this area has expedited the work of both fortune hunters and students of history. Advances in technologies to detect wrecks have greatly aided the salvor. Yet, the recent find of the *Titanic* demonstrated how we can explore and learn from these sites without tearing them apart. Unmanned, nondestructive equipment such as remote controlled robots with video cameras will soon explore previously inaccessible shipwrecks. At the same time, better and less expensive equipment has made sport diving increasingly popular and a growing source of tourist income in coastal areas with shipwreck sites. However if the commercial mining of these wrecks remains unchecked, there will be few wrecks left for current and future generations of scholars, tourists and the general public. The most important wrecks will have been plundered or destroyed.

This legislation clearly conveys the responsibility over historic shipwrecks found in State waters to the States. It has the support of the historic preservation, archeology and State organizations, as well as the sport diving community. Supporting organizations include the National Governors Association, the National Trust for Historic preservation, Society for Historical Archaeology, American Association of Museums, Diving Equipment Manufacturers, Underwater Society of America, and the U.S. Department of the Interior. Historic shipwrecks are time capsules from our forefathers. And like any other part of our heritage, they deserve to be treated properly, and with respect.

It's time to abandon the principle of "finders-keepers, losers-weepers" with respect to these historic shipwrecks. The archeological community and America's sport divers are tired of weeping. I hope my colleagues will support me in the speedy consideration and approval of this important legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 858

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(1) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(2) included in the range of resources are certain abandoned shipwrecks.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "embedded" means firmly affixed in the submerged lands or in coralline formations;

(2) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(3) the terms "public lands" and "Indian lands" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa–470ll);

(4) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(5) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(6) the term "submerged lands" means the lands—

(A) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(B) of Puerto Rico, as described in section 8 of the Act of March 2, 1917 (48 U.S.C. 749); and

(C) beneath the navigable waters of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, including inland navigable waters and waters that extend seaward to the outer limit of the territorial sea.

SEC. 4. RIGHTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources.

SEC. 5. GUIDELINES.

The Advisory Council on Historic Preservation, established under section 201 of the Historic Preservation Act (16 U.S.C. 470i), in consultation with appropriate public and private sector interests (including archeologists, salvors, sport divers, historic preservationists, and State Historic Preservation Officers) shall publish, within six months after the date of enactment of this Act, advisory guidelines for the protection of historic shipwrecks and properties. Such guidelines shall be available to assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this Act in such manner as will be consistent with the policies stated under section 4.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this subsection. The Secretary of the Interior shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (3).

(b) TRANSFER OF TITLE TO STATES.—The title of the Untied States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(c) EXCEPTION.—Any abandoned shipwreck in or on the public lands of the United States (except the Outer Continental Shelf), is the property of the United States Government.

(d) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, or other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any suit filed before the date of enactment of this Act.●

● Mr. GRAHAM. Mr. President, I am delighted to be cosponsoring with my colleague, Senator BRADLEY of New Jersey, this bill to protect abandoned shipwrecks.

The bill grants title of abandoned shipwrecks to the United States, and transfers that title to the State in or on whose submerged lands the shipwreck is located.

This extension of control of such sites to the States involved provides the opportunity for appropriate recovery of shipwrecks by both the public and the private sectors, while also safeguarding the historical and environmental values of the sites and artifacts.

This legislation will encourage protection and preservation of the evidence of the daring voyages of discovery, of the historic battles for control of an uncharted new land, of the courage—and the folly—of our ancestors and early explorers.

It is an important legacy. We now have the technology for our own discovery and exploration of what time and the oceans have held secret all these centuries. We need Federal and State supervision to ensure that technology enriches—not impoverishes—our knowledge and heritage from the sea.

Underwater archeology—the piecing together of the history of a people—is as important to our understanding of civilization as the sites we cordon off and examine on land. The earliest chronicles of our Nation are chronicles of the sea.

Florida alone has more than 300 recorded shipwrecks from the years between 1521 and 1825. The coast of Florida was the main trade route for colonizers and treasure ships. Hundreds, perhaps thousands of unrecorded shipwrecks from the time of Columbus on are likely.

Almost all of the ships wrecked on reefs or shoals, were driven into shore by violent storms and hurricanes. The most telling and valuable shipwrecks are found along the coastline—in relatively shallow and accessible waters, or overgrown by coral reefs.

Knowledge gleaned from careful charting and uncovering of these shipwrecks is especially significant to the million of Hispanic Americans whose ancestors explored and colonized this country. Ponce de Leon, Narvaez, De Soto, Villafane, Ortiz—these and scores more seafaring pioneers spent their lives, and lost them, in the service of the Spanish empire, trying to conquer America.

The fabulous treasures to be recovered from a few of the wrecks are not as important as the wealth of information about our own history those fragments of wooden hull and metal artifacts hold.

The first leases to salvage historic shipwrecks were granted by the State of Florida in the late 1940's. Treasure, such as that from the Spanish plate fleet which went down in a hurricane off the Florida keys in 1733, was recovered in the fifties and sixties by private salvagers.

The division of archives, history and records management was created in Florida in the 1960's in an effort to better manage and preserve the State's historic shipwrecks. The agency is charged with management of historical and archeological resources on State-owned lands, including sovereignty submerged lands. The State is granted title to any artifacts recovered from these sites.

Unfortunately, the State's interest in preservation has been severely restricted by Federal admiralty law applications to historic shipwreck sites in State waters.

In addition to granting title of abandoned shipwrecks to the United States, and transferring that title to the State on whose submerged lands the shipwreck is located, this bill sets up guidelines for preserving and sharing historic artifacts and sites for future generations.

This bill mandates that the States develop policies to protect natural resources and habitat areas; guarantee recreational exploration of shipwreck sites; and allow for appropriate recovery of historic information and artifacts.

States are also encouraged to create underwater parks on and adjacent to shipwreck sites for the enjoyment of sport divers.

It is important to emphasize that this bill only applies to vessels listed in National Register of Historic Places or those embedded in the ocean floor or located in coral formations in State waters. Since application is limited to State waters, recoveries such as the location of the "Atocha" by Mel Fisher more than 40 miles off Key West, would not be affected by this legislation.

Additionally, this bill requires the U.S. Advisory Committee on Historic Preservation, and consultation with archeologists, sailors, sport divers, and other appropriate public and private sector interests, to publish advisory guidelines for protection of shipwrecks and their environments.

When our technology leaps forward far enough to take us back into our past, we have a responsibility to safeguard that new access. We have the opportunity to revisit history, to learn more about where we have come from and maybe about where we are going.

That is the true treasure to be salvaged from the shipwrecks along our coasts. The knowledge we bring up along with gold coins and silver bars has no price—and belongs equally to all of us.●

By Mr. PELL (by request):

S. 859. A bill to amend the Arms Control and Disarmament Act in order to extend the authorization for appropriations; to the Committee on Foreign Relations.

STATEMENT OF
MR. MILTON BUSH, ESQ.
DIRECTOR OF WASHINGTON OPERATIONS
DIVING EQUIPMENT MANUFACTURERS ASSOCIATION
BEFORE THE
PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE
OF THE SENATE
ENERGY AND NATURAL RESOURCES COMMITTEE
September 29, 1987

The Diving Equipment Manufacturers Association represents the United States producers of sport and commercial diving products. We are an $800 million industry in total, employing approximately 30,000 people in the U.S. This includes, but is not limited to: 17,000 instructors, 4,000 retailers and their employers, 6,000 employees of manufacturing companies, and 3,000 employees of suppliers, certifying agencies and destination operators. DEMA then is the primary organization that "links" producers, sellers, instructors and suppliers of equipment and recreational diving opportunities together, to promote the safety and growth of the sport. As this essential "link" to the broad-based sports diving community, we feel we are in a unique position to comment on S. 858, to pledge our support for S. 858 if amended to include a "tools of excavation" requirement in the definitions section of the bill; and to demonstrate why we support such an amended bill and not its predecessors.

The predecessors of S. 858 did not guarantee sports' divers access to shipwrecks as enumerated in the bill, while the historical value and environmental integrity of these sites remained protected.

Consequently, we would recommend that SECTION 3. DEFINITIONS, be amended so that: "embedded means firmly affixed in submerged lands or in coralline formations so that" the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof.

What the "tools of excavation" requirement means to the sport diving community is that the environmental and historical integrity of the wreck will be considered before any dynamiting or dredging of the wreck would occur and that the salvor would be required to obtain a permit from a State before beginning operations.

It is important to point out now, as previous testimony and hearings in prior Congresses have demonstrated, that the vast majority of wrecks have been discovered by sports divers. So that the incentive for sports divers remains and they may continue their discoveries which predominantly serve the public interest, SECTION 4. RIGHTS OF ACCESS provision has been amended so that states holding title to such shipwrecks pursuant to SECTION 6 of the Act "..provide... reasonable access by the public to such abandoned shipwrecks...; guarantee recreational exploration of shipwreck sites...; allow for appropriate private sector recovery of shipwrecks which protect the historical values and environmental integrity of shipwrecks and the sites..." [and] encourage states "...to create underwater parks or areas to provide additional protection for such resources."

Finally, SECTION 6 RIGHTS OF OWNERSHIP language has been clarified for consistency purposes by adding "embedded" to preface "...in coralline formations."

Each year recreational divers discover hundreds of new wrecks and artifacts. These are items that would otherwise be lost to the ravages of time and decay. By identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door for follow-up by the archaeological community and salvors. The result is that the public gains awareness of a history that would otherwise be lost. The beauty of this bill is that it brings the three interests together (sports divers, archaeologists and salvors); not in an adversarial proceeding of federal district court in an admiralty proceeding, but to resolve controversies through the Council for Historic Preservation; clarifies the jurisdictional conflict between Federal and State government ownership rights; and so that the public interest is served, that "determined eligible for inclusion in the National Register" means " ...that the Secretary of the Interior has, after consultation with the appropriate State historic preservation officer, made a written determination that the abandoned shipwreck meets the criteria for inclusion of the National Register of Historic Places."

The number of recreational divers continues to grow, and consequently, so will the number of individuals whose enthusiastic explorations lead to the location and discovery of new wrecks and artifacts. For example, over 40 percent (40%) of readers responding to a 1985 Skin Diver Magazine survey actually went wreck diving in the previous 12 months. Wreck diving is a popular speciality diving activity. Sports diving is growing at a compounded annual rate of 12 percent (12%) for equipment sales, (20% increase in sales in 1986), and an astonishing 20 percent (20%) in participation. Every year more than 400,000 new divers are certified by the various training agencies, leading to a total of over 3 million certified divers in the U.S. S. 858, which DEMA supports and endorses, meets the needs of this growing constituency.

Should, Under Appropriate Regulations, Recovery of Maritime Resources for Profit Be a Part of the Maryland Program?

A Response to Tom King and Ed Miller

Prepared for the Governor's Advisory Committee
on Underwater Archaeology

by Michael E. Roberts

One of the first issues discussed in the subcommittee on the Maryland Archaeology Program was whether or not the program should allow recovery of maritime resources for profit. It was clear from the outset, and indeed it has been clear for years, that this is a highly charged issue with proponents on either side holding positions firmly rooted in their training and experience. Because of the volatility of the issue, I decided, as Chair of the subcommittee, that the best approach to dispassionate discussion would be to prepare position papers by representatives on each side of the issue. Accordingly, Dr. Tom King, for the pros, and Ed Miller, for the antis, undertook those tasks. We have all had an opportunity to read those essays. Both are well thought-out, and make strong and important points. They exceed my expectations for documents on which the Committee can base well-reasoned discussion leading to a consensus recommendation to the State of Maryland.

What follows is my thoughts on the issue, based on my reading of the essays, numerous discussions among proponents of both sides of the issue over the years, and three years as Project Manager for the archaeology work on the Whydah.

Not unexpectedly, in my view, the two sides of the issue come down to the pragmatic versus the ideal. Indeed, it was instructive, on the final day of our first set of Maryland Archaeology Program meetings, to observe that those attending were split virtually evenly with respect to the issue. A look around the room during that vote seemed to reveal that the division was based on a concern about the data in an archaeological site, as opposed to the objects in an archaeological site. This difference seems to parallel the classical dichotomy between the anthropological and the art-historical approaches to archaeological resources. Both essays echo the same message. King's looks at the real world and broadens the scope of discussion with analogies from other settings; Miller's describes an situation that might appear ideal to many in the archaeological community.

While I was Project Manager for the Whydah, I worked long and hard in the belief that good, solid anthropological archaeology could be accomplished within a salvage framework. In order to do this, it was clear that the project had to be brought into full compliance with State and Federal historic-preservation regulations. A paper presented at the meetings of the Council for Underwater Archaeology in 1987 (and attached to this report) described the history of the project up to that point, including its relationship to the regulatory systems.

As you all know, I resigned from that project in June of this year. The reasons for my resignation should be clearly understood, since they relate directly to the issue we are currently debating. In mid 1987, two events occurred that drastically changed the attitude of the salvor and his commitment to meeting the letter and spirit of the relevant regulations. The first was that, in the first round of court actions, the State lost its jurisdictional claim to the site. Almost simultaneously came an arrangement for long-sought major funding from outside investors with no knowledge of archaeology, archaeological regulations, or appropriate research practice. The resulting get-the-treasure-and-run attitude on the part of the salvor placed considerable stress on the field and laboratory staff (to the extent of one near breakdown several resignations). This, coupled with threats from the investors to use political pressure to bypass the regulatory system altogether, proved to be the final straw.

Despite this experience, I still believe that it is possible for good archaeology to be done in a for-profit setting, whether underwater or on land. The failure in the Whydah project was not due to a flaw in the premise, but to a defect in the regulatory system. That system was not completely in place, thoroughly tested, with knowledgeable regulators in positions of authority. Thus the system was vulnerable to attack. A compounding factor was the demonstrated lack of commitment to the state's own regulatory system at the executive levels of state government--a situation in which Maryland has a clear advantage over Massachusetts. My position on the issue, therefore, remains favorable to the notion that Maryland should, under appropriate regulation, allow recovery of maritime resources for profit. Taking the pragmatic view, if a compromise version of the underwater archaeology bills currently working their way through congressional committees becomes law, those who seek to recover maritime resources for profit automatically become players. In addition, as King points out, not all maritime resources have heritage value. Thus states will be faced with a necessity to develop regulations that differentiate significant resources from nonsignificant resources, as well as establishing criteria dealing with appropriate for-profit salvage operations.

Miller's essay draws extensively on existing notions of ethics, as promulgated by a wide range of professional archaeological societies, and on statements by respected writers in the field. King points out, however, that an ethic is a dynamic concept. Indeed, nineteenth-century scholars describe an ethic as a practical approach to morals, as opposed to a religious approach to morals. A brief review of the literature of ethics, from Aristotle to Descartes to Martin Luther King, underscores that dynamism. I would submit that the ethic of archaeological research is also dynamic. In archaeology, that dynamism is a result of the evolution of archaeology itself, from the pastime of wealthy dilettantes to the sole province of academics to the currently evolving business of contract archaeology.

In ethical discussions about archaeology for profit, there are two key issues, the first being the loss of information that often attends the excavation of artifacts under the pressures of the for-profit setting. The same argument has, over the last decade, been used in discussions between academic archaeologists and contract archaeologists. The quote, "You can't do good archaeology under contract," constantly echoes through the halls of universities and professional meetings. Thus contract archaeology is stigmatized as unethical.

Today many, if not most practicing archaeologists would agree that cultural-resource management, which of necessity includes contract archaeology, has made major contributions to our understanding of the past. This has been accomplished through the development of regulations, supporting infrastructures such as the inclusion of archaeologists on the staffs of land-using agencies, and a constituency for historic preservation at the highest levels of government. These, coupled with an increased interest on the part of the general public (a direct result of archaeology's greater visibility), have legitimized contract archaeology. Virtually all archaeologists ~~would~~ agree that some information is lost regardless of the setting in which the archaeology is performed. In academic research, it is the needs of the individual practitioner or the institution that dictate how much and what type of information is lost. In resource management, it is the regulations and their level of enforcement that control. Throughout Miller's paper, and indeed in a number of other writings, most notably essays in *Ethics and Values in Archaeology*, edited by Ernestene Green, the case against archaeology for profit is made on the basis of data loss. Loss of data, however, is a direct result of inappropriate procedures undertaken by unqualified individuals. Well cast regulations with effective enforcement can fully answer this objection.

The second prevailing criticism is that in a for-profit setting the collection is dispersed, and thus unavailable to scholars. The dispersal of an archaeological collection is, it seems to me, the most important issue in any discussion of archaeology for profit. However, that issue is not unique to archaeology for profit. Cultural-resource managers, contract archaeologists, and, yes, even universities regularly face problems in dealing with the mass of material generated by their operations. Space limitations, conservation capabilities, available expertise, and interest levels all enter into triage decisions as to what is conserved, what is kept but allowed to deteriorate, and what is thrown away. Indeed, as King points out, there is evidence that some collections can be better managed in private hands.

However, collections as collections are not the issue. "Uncollected" (i.e. dispersed) collections are. The reason is that such collections are unavailable for study. This is clearly a valid argument in the academic setting, where collections are used to train students, to provide information for ongoing analysis, etc. I agree completely that the maintenance of collections for teaching purposes is critical to the growth of the discipline of archaeology. However, every item in every collection cannot, and should not be retained. Properly framed regulations can provide guidance to those, both academics and nonacademics, who must make such decisions. Hence, if we can agree that a good set of enforceable regulations can be developed, all of the major reasons for disallowing for-profit archaeology lose their validity. I disagree with those who take the position that because recovery for profit has not so far been combined with good archaeology, it can never be so combined. Our deliberations on developing the Maryland Archaeology Program are making history, not repeating it. There are, however, several problems to be overcome.

The Problems

On the basis of my experience with the *Whydah*, my understanding of the *De Braak* fiasco, and discussions with other archaeologists, I believe I have identified several problem areas that can and should be addressed by any set of regulations that allow for recovery of underwater archaeological materials for profit.

* Regulations. In the vast majority of the cases with which I am familiar, problems have arisen through lack of regulation, incomplete regulation, poorly understood regulations, and lack of enforcement of whatever regulations may exist.

* Uninformed review agencies. In many cases, those individuals having review responsibility have little or no knowledge of underwater archaeology and view it a mystical practice with no relation to land-based archaeology, about which they may or may not be knowledgeable.

* Funding. In the cases of the *Whydah* and the *De Braak*, when outside financial resources, controlled by the investors, became available, the projects' former commitment to good research practice was abandoned. Peter Throckmorton has recently brought to my attention a similar case in Central America.

* Political pressure. An absence of understanding of the role of archaeological research at the higher levels of government makes possible the application of political pressure by well-connected investors.

Solutions

* Regulations. The development of sound regulation requiring professionally acceptable archaeological practice as appropriate for the site in question, regardless of who is doing the work, and including guidelines for treatment and disposition

of materials, should be complete and in place prior to the issuing of permits for such work.

* Review agencies. Agencies charged with enforcement should be fully informed on professionally accepted archaeological practice and incorporate individuals with experience in relevant disciplines as well as representatives of the various constituencies for maritime resources.

* Funding. Before the issuance of any permits for recovery of materials, the nature and source of funding sufficient to meet the requirements of the regulations should be identified. Steps should be undertaken to ensure that investors understand the required archaeological process, the limitations and opportunities imposed by the regulations, and typical costs involved.

Recommendations

In addition to the general solutions suggested above, we recommend that the Maryland Archaeology Program become a part of Maryland's Historic Preservation Plan, thus integrating maritime resources with land-based resources in a comprehensive approach to understanding Maryland's past. We also recommend that, under appropriate regulations, recovery of maritime resources for profit be a part of the Maryland program.

To assist in the implementation of these regulations, we recommend that the Maryland Archaeology Program develop a handbook for underwater archaeology, tentative title: So You Want to Salvage a Wreck? This handbook will explain what archaeology is, how it is done, what it may cost, and the existence of unknowns that could change all of the above. Included should be the full text of existing regulations, with discussion of their compliance and enforcement mechanisms.

Michael Roberts

THE SITE-TESTING PROGRAM FOR THE PIRATE SHIP WHYDAH

Professional archaeological study of the pirate ship WHYDAH has been in progress for three years. Despite this, the investigation is still in its infancy. In 1986, we completed the testing phase of the project; currently we are developing the research design and data-recovery plan for the next several year of the project's expected life. Professional archaeologists, historians, and conservators have participated in the exploration, evaluation and testing of the wreck site since 1984.

One of the challenges of the project is the building of a project team that can not only formulate and implement a scientifically valid research program but also meet the needs of the project sponsor and the several regulatory bodies having jurisdiction over the project. One distinct advantage in this project has been the commitment of the sponsor, Maritime Explorations, Inc., to meeting professional and regulatory requirements for recovery, conservation, and scientific reporting of the project's results.

A second challenge is the development of sound recovery, conservation, analysis, and curation methods in an environmentally hazardous field situation, using a mix of professional archaeologists, professional salvage divers, professional laboratory staff and volunteer laboratory assistants.

And the largest challenge of all is meeting project goals in the face of peer suspicion, sponsor paranoia, and idiosyncratic funding.

Nevertheless, these challenges are being met, and we are confident that we will begin the data-recovery phase of the project with valid procedures implemented by an experienced and qualified team within a scientifically appropriate research design, which will reveal a little-known element of the past to our scientific peers as well as to the general public.

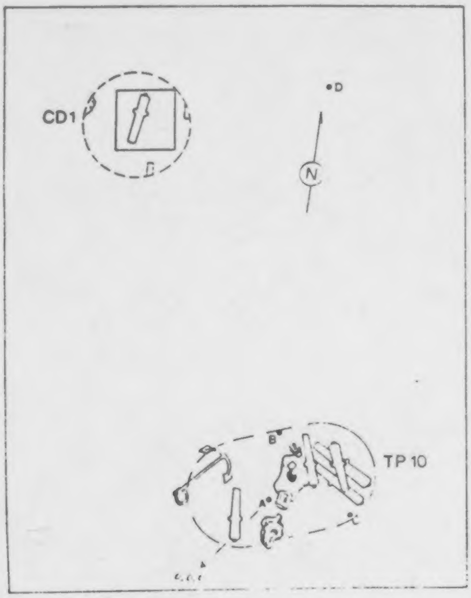
The Project

Since its earliest days, the project has functioned under permits from the Massachusetts Board of Underwater Archaeological Resources. It was the first project of its kind to come before the Board and, as was to be expected, misunderstandings and misinterpretations were fairly common in the early days. As the project developed, so did the expertise and experience of the Board members as well as the permittee.

Before this time, the Board had not had any formal regulations. The current regulations were actually written and accepted during the early days of the project. It was also a period when the Board and the various permittee currently exploring or otherwise working in Massachusetts waters were required to reach a mutual understanding of philosophical and practical matters.

1984

Controlled scientific examination of the project area began late in the 1984 field season. A team of professional archaeologists continued the detailed exploration carried out over the previous several years. The archaeologists were retained because after several years of exploration Barry Clifford, president of Maritime, was convinced that he had located the original wreck site. In his own words, he "had a tiger by the tail," and recognized his need for professional assistance if he were to meet the requirements of the Massachusetts Underwater Board.

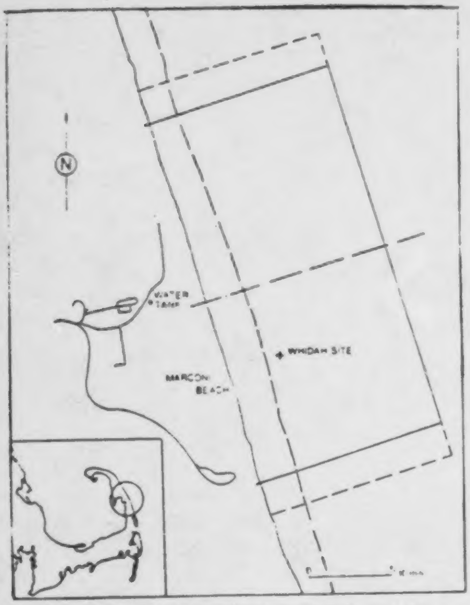


Test Pit [illegible]

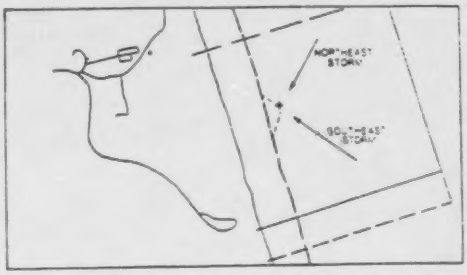
Test Pit 10 and Cofferdam 1

Using as preliminary goals the determination of the physical extent of the site, the identification of the discovered wreck, the physical nature of the site, and the testing of various field techniques, we started work in September of 1984. Two test units were opened in that year, using several approaches to the excavation process.

In addition, a detailed magnetometer survey was conducted by Ocean Surveys and a preliminary subbottom profile survey was done by Klein Associates.



Location of artifact concentration from the Whidah, with location of 1717 shoreline (dashed line).



Expected distribution of main wreckage components during storm which sank the WHIDAH

General direction of long shore currents off Marconi Beach.

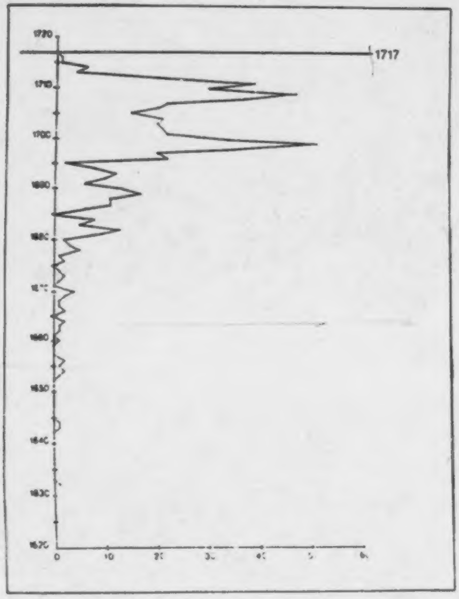
Location of Wreck Site

Storm and Current Patterns

Analysis of the year's activities led to some preliminary conclusions about the site.

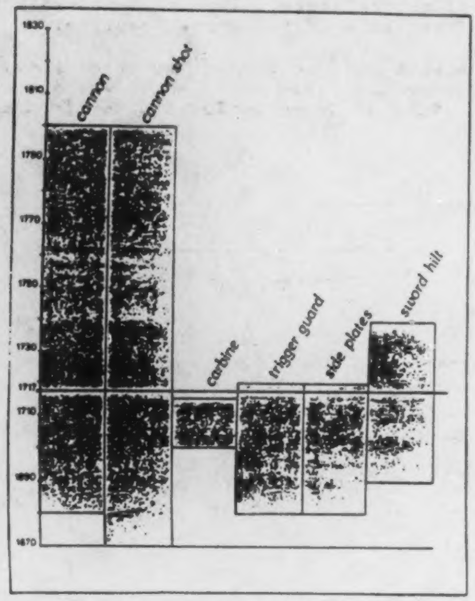
First was that the distribution of material resulting from the original wreck was most probably controlled by storm and current forces during and after the wreck, leaving a roughly fan-shaped pattern radiating from the original wreck location.

Secondly, the analysis of recovered material provided strong circumstantial evidence that the wreck site was indeed that of the WHYDAH. This evidence included dates from 656 datable coins. . .



Date Distribution of Datable Coins

as well as date ranges from recovered weapons and weapons parts.



Date ranges for weapons recovered and analysed. Note: No weapons begin their use period after the sinking of the Whidah and all weapons were in use before or during the Whidah's loss.

Date Ranges for Weapons and Parts

Finally it was clear that we needed better excavation procedures than those employed in 1984.

1985

As plans for 1985 were developing, it was clear that any excavation procedures used would require the issuance of a Corps of Engineers permit. In addition, we considered that the site was potentially eligible for inclusion in the National Register of Historic Places. These two facts led us to submit documentation to the Corps and the Massachusetts SHPO for a determination of eligibility and a preliminary case report.

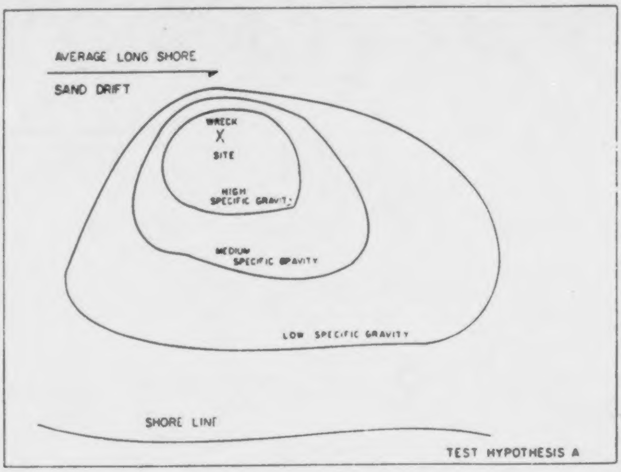
The site was determined eligible and the 106 process was implemented, with the result that the Corps issued a permit that had attached to it a Memo of Agreement between the Corps, the Mass. SHPO, the Advisory Council, and Maritime Explorations.

The result of this action was that not only the state regulatory process but also the federal process became involved with the project, all with the complete agreement and cooperation of the project sponsor.

In accordance with the Memo of Agreement, a comprehensive preliminary data-recovery plan was developed. Since the 1984 goals had not been met, it was necessary to develop a detailed testing plan to achieve the original goals referred to above, which would then allow us to prepare a final data-recovery plan.

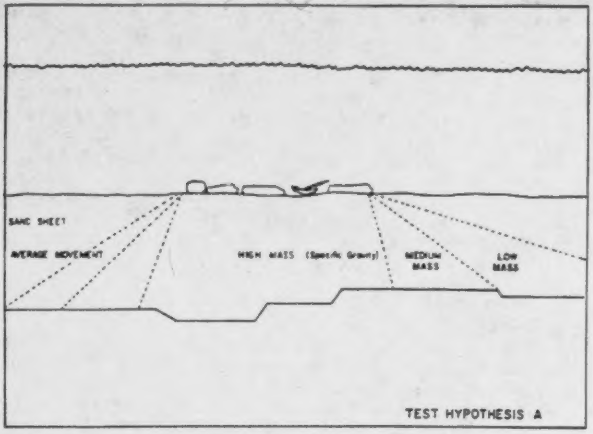
Ultimately, this plan was in three phases. Phase I deals with additional survey and preparation for data recovery. Phase II is the development of the data-recovery and public-benefit programs. Phase III is the implementation of the data-recovery and public benefit programs.

Drawing on the results of the 1984 work and other research, a model for site formation was developed and used in establishing and testing strategies. This model recognizes the fan-shaped distribution hypothesized in 1984 and adds to this notion observations on the geomorphology and nature of the sand bottom.



1717 Wreck Distribution

Essentially, after the initial wreck and breakup (documented by an observer of the wreck), the liquid nature of the sand sheet and subsequent storm history controlled further distribution of the material.



Distribution of Material Within Sand Sheet

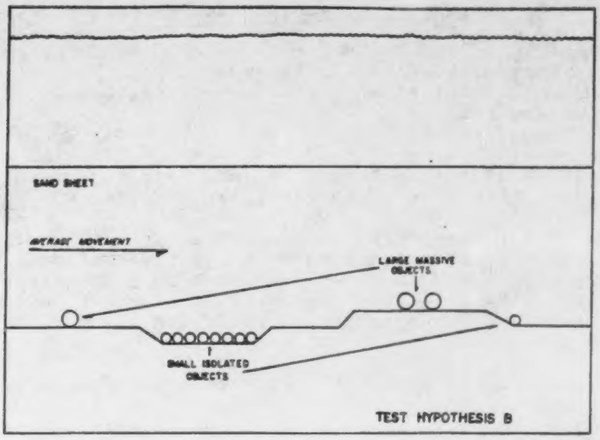
Concretions of any size began settling within the sand sheet as they were forming, roughly where initially deposited. Smaller iron masses and isolated artifacts drifted within the sand sheet with their descent trajectories roughly determined by their mass or specific gravity.

As the objects reached the clay base, the morphology of the substrate began to influence their distribution.

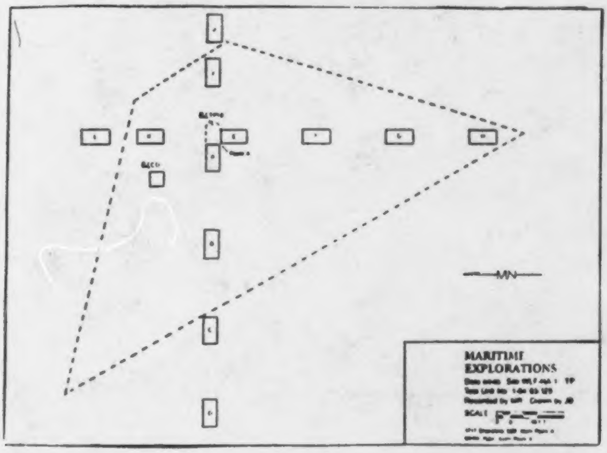
Pits, crevasses, ledges, and other bottom forms tended to concentrate material as it was moved by the sand sheet under the influence of longshore currents, storms, and other factors.

To test this model a series of test unit transacts was laid out across the site using a point within the area of principal concentration discovered in 1984 (termed Point A) as the reference point.

Twelve systematic and three judgmental 8 foot by 16 foot test pits were requested from and authorized by the Massachusetts Underwater Board.


SAND SHEET
AVERAGE MOVEMENT
LARGE MASSIVE OBJECTS
SMALL ISOLATED OBJECTS
TEST HYPOTHESIS B

Distribution of Objects in Pits, etc.


MN
MARITIME
EXPLORATIONS
SCALE

Test Pit Layout

Other elements of Phase I of the Preliminary data-recovery plan include:

1. concentrated historical research
2. the development of excavation and computerized recording systems
3. laboratory support
4. conservation support
5. geophysical research into offshore dynamics, and
6. a final report on Phase I and its results

Considerable time was expended in the permit applications process. This, coupled with severe weather conditions, limited the field work for the 1985 season, when only three test units were completed. These units, however, were quite productive, yielding over 4,000 objects representing twenty different material types.

In addition, one of our principal research questions was answered during this year. While working in one of the systematic test units, we discovered what appeared to be a ship's bell. A test unit was placed at its location and the bell, as well as other material, was recovered. The bell was highly concreted and several weeks were devoted to reducing this concretion under the direction of Betty Seifert.

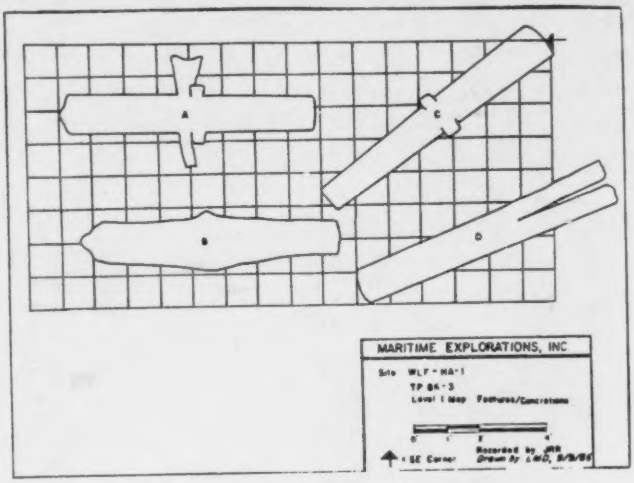
Bell

Reduction revealed the inscription "The Whydah Gally 1716". Our only disappointment was that we had been spelling it W-h-i-d-a-h for the past several years and we had to order new tee shirts. There was also a race among the crew to be the one to get the vanity license plate with the proper spelling (Barry was not the winner).

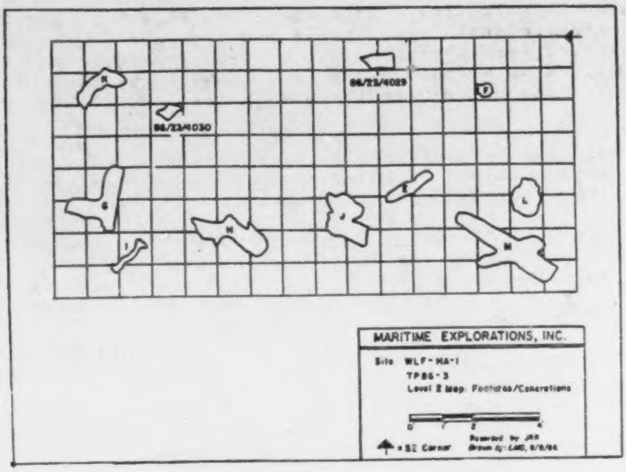
With the discovery of the bell, effort that had originally been targeted on analysis of materials for identification of the wreck was redirected toward other research.

The other significant event of 1985 was the development of operating procedures for field and lab activities. The purpose of these procedures was to eliminate the effects of changing personnel over the course of the expected data-recovery period (currently anticipated to be five years), as well as to provide standard operating orders for the dive team, who are not all trained archaeologists.

The field-test procedures identify four levels of documentation for each test unit. Level one documents the large objects, greater than four feet in length or diameter.

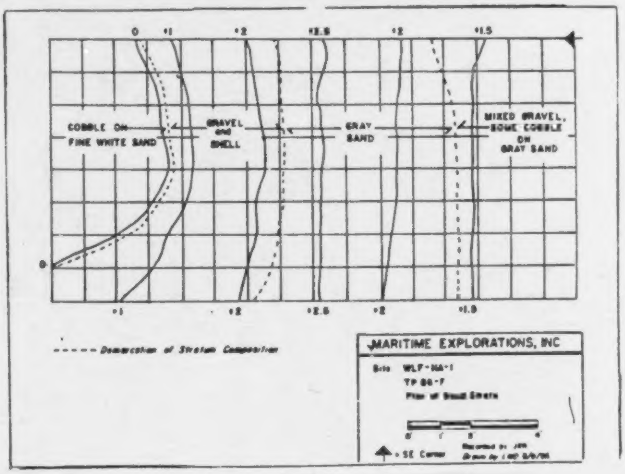


Level One Map


K
86/23/4030
86/23/4029
F
G
I
H
J
E
L
M
MARITIME EXPLORATIONS, INC.
Site WLF-MA-1
TP86-3
Level 2 Map: Footings/Concretions
0 1 2 4
Recorded by JRR
= SE Corner
Drawn by: LMD, 8/8/86

Level Two Map

Level two documents the location of smaller objects, that are larger than the 1-foot-square primary provenience units. At level three, objects smaller than one foot are collected and documented by the number of the provenience unit.


0
+1
+2
+2.5
+2
+1.5
COBBLE ON FINE WHITE SAND
GRAVEL and SHELL
GRAY SAND
MIXED GRAVEL, SOME COBBLE ON GRAY SAND
0
+1
+2
+2.5
+2
+1.5
----- Demarcation of Stratum Composition
MARITIME EXPLORATIONS, INC
Site WLF-MA-1
TP 86-7
Plan of Sand Strata
0 1 2 4
Recorded by: JRR
= SE Corner
Drawn by: LMD 8/8/86

Bottom Topography

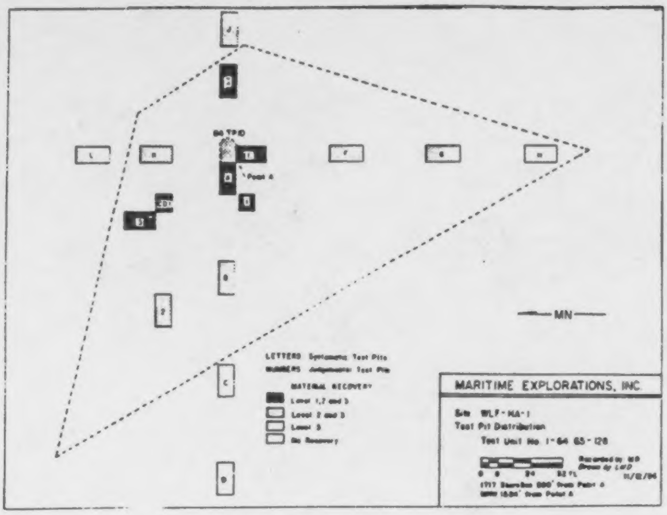
The final documentation is the mapping of the bottom topography. This is done to aid in testing our distribution hypothesis.

These procedures have subsequently been perfected by our field archaeologist in the 1968 field season and will be discussed in his paper.

Other procedures developed in 1985 were those for concretion reduction, documentation in the vault, and field inventory and preliminary catalogue.

1986

In 1986 we completed all the originally planned systematic test units and several of the judgmental units.


MN
LETTERS Systematic Test Pits
NUMBERS Judgmental Test Pits
MATERIAL RECOVERY
Level 1,2 and 3
Level 2 and 3
Level 3
No Recovery
MARITIME EXPLORATIONS, INC.
Site WLF-MA-1
Test Pit Distribution
Test Unit No. 1-64 65-128
0 8 24 32 ft.

Completed Test Units

Enough to feel confident that we understand the nature of the primary wreck site, its location and its integrity. Analysis is proceeding with respect to our test hypothesis and will be reported on in our final report for the testing phase.

In addition to completing these units, we commissioned a pilot study of historic resources in Britain that has given us a valuable planning tool for future work. This study will be reported on by Anne Turner.

Concretions and their reduction and documentation was the biggest developmental challenge of 1986.

Concreted Cannon

It became clear in 1985 that the artifact associations locked up in concretions were probably the closest we were going to get to actual associations on ship board or immediately after the wreck.

Reedy and Concretions

Thus, it was important to develop reduction and documentation procedures that would accurately recover these associations.

Louise and Concretion

Louise DeCesare our lab supervisor has been developing and testing these procedures and will report on this aspect of our lab activity.

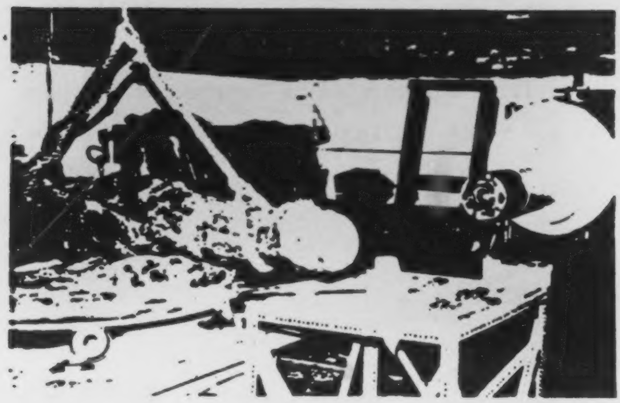
One of the most interesting and technically challenging of the concretions is a bag of artifacts.

Bag

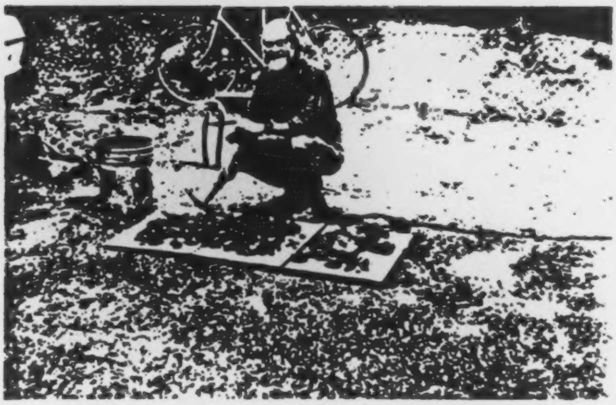
So far mostly weapons parts but potentially one individuals personal belongings. This object presents a distinct challenge to our conservator Betty Seifert due to the wide range of materials represented as well as the fragile nature of many of them. Her activities will also be reported here.

We have also begun using an industrial X-ray firm to help us locate and identify objects within many of the concretions.

X-Ray Console



X-Raying Cannon

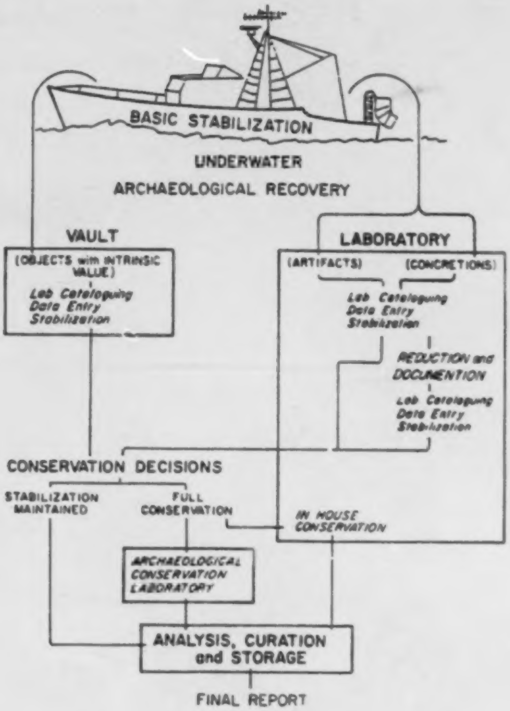


Bill Marshall

Finally, geologist Bill Marshall is developing a work plan for sampling and analysis of the ship's ballast.

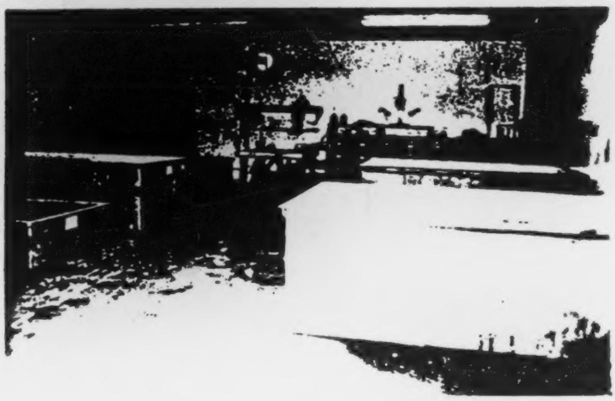
WRAP UP

We move into 1987 with a good knowledge of the range of materials to be encountered, the location and nature of the primary wreck site,

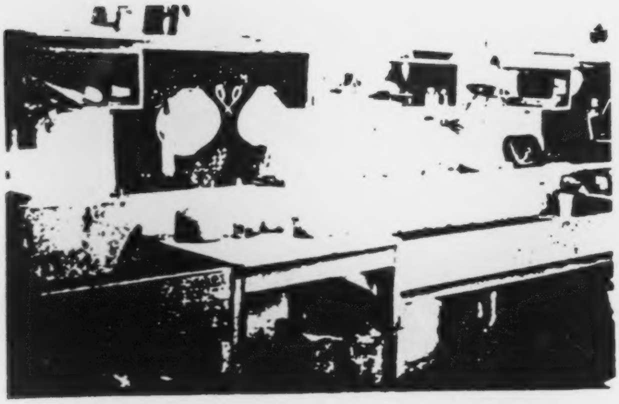

BASIC STABILIZATION
UNDERWATER
ARCHAEOLOGICAL RECOVERY
VAULT
(OBJECTS with INTRINSIC VALUE)
Lab Cataloguing
Data Entry
Stabilization
LABORATORY
(ARTIFACTS)
(CONCRETIONS)
Lab Cataloguing
Data Entry
Stabilization
REDUCTION and DOCUMENTION
Lab Cataloguing
Data Entry
Stabilization
CONSERVATION DECISIONS
STABILIZATION MAINTAINED
FULL CONSERVATION
IN HOUSE CONSERVATION
ARCHAEOLOGICAL CONSERVATION LABORATORY
ANALYSIS, CURATION and STORAGE
FINAL REPORT

Project Flow Chart

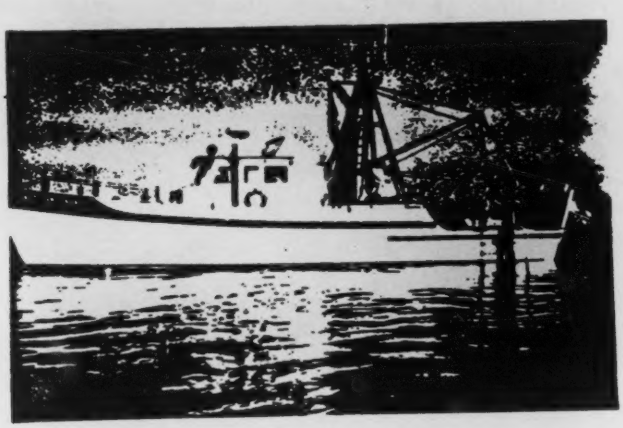
processing procedures and time lines in place, a functioning lab and preliminary conservation facility,



Lab/Tanks



and an experienced dive team and boat crew.

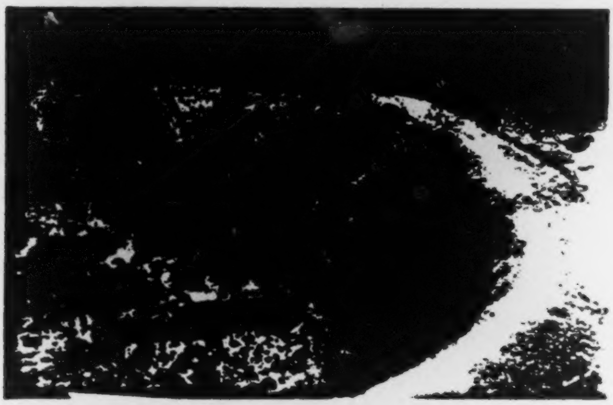


VAST

Reedy and Crew

Our next tasks are the completion of testing phase analysis, the development of a research design for data recovery and the establishment of several public-benefit programs which will include teacher training, internships and a newsletter.

We also have a scientifically interesting



Diver Entering Pit

and technically challenging site

Site from Beach

Painting of the Site

one which we hope to report to you as work progresses over the next several years.

Michael Roberts
TIMELINES, INC.
51 Hollis Street
Groton, MA 01450

Technologies for Underwater Archaeology & Maritime Preservation

Background Paper

CONGRESS OF THE UNITED STATES
Office of Technology Assessment

side-scan sonar and sub-bottom acoustic profiler located an anomalous signal in the area in which the wreck was thought to lie. In raising the *Mary Rose*, British archaeologists and engineers developed a specially engineered recovery apparatus, the cradle of which was designed to continue supporting the hull in dry dock through the initial conservation phases. It was the product of extensive multi-professional collaboration. The Mary Rose project will serve as a test bed for conservation chemistry and allow chemists to determine the best methods for conserving waterlogged wood.[42]

The *Mary Rose* also represents an important collaboration between sport divers and professional preservationists. The wreck was discovered by members of the British Sub-Aqua Club, who worked closely with supervising archaeologists. Without these essential volunteers, successful excavation, raising, and subsequent conservation would have been impossible.

The relatively successful restorations of both the *Wasa* and the *Mary Rose* depended on long-term commitments by governments, preservationists, and scientists to engender public interest, and to obtain reliable funding, proper research and interpretive facilities, and access to technical expertise.

ISSUE B: The lack of Federal legislation to determine jurisdiction over and ownership of historic shipwrecks has severely hampered most efforts to protect them for the public.

Recent legislation,[43] and more effective enforcement of older preservation laws, have led to improved protection of archaeological sites on lands controlled by the Federal Government. Submerged archaeological sites under Federal administration are subject to the same laws, regulations, and management policies governing sites on dry land. These laws, regulations, and policies are intended to shield submerged sites from such destructive activities as mineral exploration and dredging, and also limit private access to them if they lie within national parks and marine sanctuaries. However, the status of historic shipwrecks situated outside national parks and marine sanctuaries, is adversely affected by an additional, highly complex body of law governing maritime activities, as well as ancient legal principles, such as property ownership, admiralty law, and the law of finds.[44] Further complicating matters are the several different marine jurisdictions (box F). Other countries such as Australia, Canada, Cyprus, England, Norway, and Sweden have enacted national laws regulating the management of all cultural resources within the waters of their outer continental shelves.[45]

Maritime salvaging tradition lies at the heart of continuing conflict over the treatment of U.S. historic shipwrecks, which has pitted private salvors and State preservation officers against each other. This tradition, established to motivate privately conducted rescue of vessels in peril, rewards salvors for their attempts, or grants them possession of abandoned vessels and their contents. However, maritime law treats both historic and modern vessels identically, considering the time of abandonment, whether 2 or 200 years ago, irrelevant.

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[42] Margaret Rule, "The Raising of the *Mary Rose*," *The Illustrated London News*, October 1982.

[43] The Archeological and Historical Preservation Act of 1974 (Public Law 93-291; 88 Stat. 174) which amended the Reservoir Salvage Act of 1960 (Public Law 86-253; 74 Stat. 220; 16 U.S.C. 469-469c) and The Archeological Resources Protection Act of 1979 (Public Law 96-95; 93 Stat. 712, 16 U.S.C. 470) and the 1980 amendments to National Historic Preservation Act of 1966 (Public Law 96-515; Stat. 2997) among others.

[44] Admiralty law of salvage rewards the person or persons who assist in saving a ship in peril and requires payment by its owner of a salvage fee. If no owner is found, the ship and its contents may be sold to raise the award. The law of finds awards lost or abandoned property to the person or persons finding it. "The law of finds and the law of salvage are not always clearly distinguished by admiralty courts." Thompson M. Mayes, "Current Legal Issues in the Law of Historic Shipwrecks," *A Memorandum for the Office of General Counsel*, National Trust for Historic Preservation, October 1986.

[45] See P.J. O'Keefe, *Current Developments Regarding Regulation of Marine Archaeology Outside Territorial Waters*, University of Sydney; cited by Douglas Shallcross and Anne Giesecke, "The Status of Federal and State Regulation of Underwater Cultural Resources: Lessons of the Treasure Salvors and Cobb Coin Cases," *Underwater Archaeology: The Proceedings of the 14th Conference on Underwater Archaeology, 1986*. See also George R. Fisher, *Legal Considerations in Underwater Archaeology*, National Park Service, Southeast Archeological Center, Tallahassee, Fl (paper presented at the annual meeting of the Society on Underwater Archaeology, Philadelphia, PA, January 1976).

Box F.—The Seven Marine Jurisdictions

U.S. Marine Jurisdictions Comprise:

1. internal waters (those inside the coastline);
2. the Territorial Sea (three nautical miles from the mean low tide) in which jurisdiction is the same as if the area were dry land, under the State governments;
3. the Contiguous Zone (12 nautical miles from State waters) within which the Federal Government controls customs, rights of passage, health regulations, military activitiies, and navigation;
4. the Outer Continental Shelf (the seabed beyond the Territorial Sea to slightly beyond 200 miles) on which the Federal govenment exercises controls relating to natural resource exploitation;
5. the High Seas, the area beyond the Outer Continental Shelf to which international law applies;
6. the Exclusive Economic Zone (see below); and
7. the fishery Conservation Zone (16 U.S.C. 1811), extending to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

These definitions are, for the most part, recognized by other nations. Further definitions cover:

- Navigable inland waters are those which were navigable by any kind of vessel on the date a State entered the Union. The present accepted legal definition, however, covers those waters which are usable for interstate or foreign commerce. The United States controls operations on and under navigable inland waters, but the adjoining State owns the water and submerged beds.
- Non-navigable inland waters—the owner of the shoreline (riparian owner) is the owner of the water and the subsurface land under it to the center of the body of water.

The Exclusive Economic Zone (EEZ) is a zone contiguous to the Territorial Sea, including zones contiguous to the territorial seas of the United States, Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United States Trusteeship Agreement), and U.S. overseas territories and possessions. The EEZ extends to a distance 200 nautical miles from the baseline from which the breadth of the Territorial Sea is measured. Within the EEZ the United States has, to the extent permitted by International Law:

- sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources, both living and non-living, of the seabed and subsoil and the superajacent waters and with regard to other activities for the economic exploitation and exploration of the zone; such as the production of energy from the water, currents, and winds; and
- jurisdiction with regard to the establishment and use of artificial islands, and the installations and structures having economic purposes, and the protection and preservation of the marine environment. Proclamation No. 5030, *Exclusive Economic Zone of the United States*, Mar. 10, 1983, 48 F.R. 10605.

SOURCE: Office of Technology Assessment, 1987.

Maritime law is in sharp contrast with preservation law, in which prehistoric and historic sites and objects found on public land are considered to be held in trust by the U.S. Government for all its citizens. As such, according to a substantial set of preservation laws (Table 2), cultural resources on public lands must be managed for the public good.

In the oceans surrounding the U.S. coast, private salvors, particularly treasure hunters, search out gold and silver items, coins, jewels, and highly valued antiquities at wreck sites, employing such devices as dredges, blowers, and explosives. They may ruin such contextual remnants as hulls, furniture, armament, and cargo, leaving sites unfit for proper scientific investigation, and for public display and education. Because only an extremely small number of wrecks contain such desirable artifacts, their searches "have destroyed the archaeological potential of hundreds of historic, but not commercially promising sites."[46]

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[46] See Carol Weare, "Saving Shipwrecks: An Underwater Imbroglio," *Place*, De[illegible]er 1983.

Photo credit: National Park Service, Submerged Cultural Resources Unit

Submerged Cultural Resources Unit diver examines the bow of America [illegible] at Isle Royale, MI, in 1928.

Interest Groups

Historic shipwrecks [illegible] the [illegible] of [illegible] competing groups:

1. *Treasure hunters* [illegible] from the sale of gold, silver, gems, and other valuables, and as successful claimants of historic wrecks in Florida and Texas, they are the most aggressive seekers of these fragile resources, even when, as is often the case, their quests result in financial losses.[17] Although only about a dozen treasure hunters operate full time, their sometimes flamboyant, high-risk activities have captured the public interest. They have, through assiduous lobbying in Congress, been instrumental in the repeated defeat, since 1979, of earlier versions of the Abandoned Shipwreck Act. One of the most [illegible] means of financing treasure hunting [illegible] involves investors [illegible] limited partnerships or other business relationships. [illegible] have been stimulated by [illegible] tax shelters for investors in limited partnerships. [illegible] the tax reforms enacted [illegible] are likely to render [illegible] less attractive because they [illegible] greater restrictions on the losses investors may claim from high-risk limited partnerships.
2. *Underwater Archaeologists and Maritime Historians.*—They are joined by Federal and State Historic Preservation Officers, general and nautical museum curators, and conservation professionals in governmental agencies and universities [illegible] care of recovered objects. This group is interested primarily in preserving and conducting research on maritime and underwater archaeological sites, and [illegible] the public. Historic [illegible] on such [illegible] interest as [illegible]

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[17] Anne [illegible] Statement [illegible]

the largest. The Conference on Underwater Archaeology and the Society for Historical Archaeology estimate that there are more than 2 million sport divers in the United States, many of whom find diving on wrecks an enjoyable, exciting, and educational pastime. Along with fishermen, sport divers locate the bulk of all shipwrecks within U.S. coastal and inland waters. They collect artifacts, and also photograph and study the histories of undersea wrecks avocationally. Many volunteer their services to qualified archaeologists. Some, however, also loot and disturb sites. Sport divers strongly advocate their right under protective shipwreck legislation to legal access to submerged wrecks. Their principal membership and trade organizations, such as the Diving Equipment Manufacturer's Association, have supported the latest version of the Abandoned Shipwreck Bill (H.R. 74 and S. 858).

Litigation Over Ownership of Historic Shipwrecks

As noted earlier, in the absence of Federal legislation to safeguard historic shipwrecks, 27 States have passed antiquities statutes to broaden their jurisdiction and exert regulatory control over significant wrecks within their territorial waters (box G). Yet several Federal court cases, disputed over more than a decade, have denied the States authority to enforce their statutes. These cases, dealing with competing claims to historic shipwrecks between commercial salvors and State preservationists, have also called into question the validity not only of State governments, but the Federal Government, in controlling the recovery of archaeological materials at significant sites.

Photo credit: Mitch Keller, National Park Service

Sport divers begin a dive at Isle Royale National Park on a shipwreck bouyed by the National Park Service for visiting sport divers.

Two major litigations in particular have proved lengthy, complex,[48] costly, and ultimately inconclusive for preservation purposes because of the highly inconsistent and even contradictory rulings emanating from State, admiralty, and appellate courts. *Treasure Salvors, Inc.* v. *Unidentified Wreck and Abandoned Sailing Vessel* (cases I, II, and III) concerned efforts by the State of Florida and the Federal Government to exercise regulatory control over commercial salvaging at historic shipwreck sites on the Outer Continental Shelf (OCS). *Cobb Coin, Inc.* v. *Unidentified Wreck and Abandoned Sailing vessel* was part of efforts by the State of Florida to oversee recovery at historic shipwrecks within its three-mile territorial limit. The *Treasure Salvors* cases even involved claims by a rival salvor and Supreme Court interpretation of the merits of their claims.

Treasure Salvors, Inc., after searching for the wrecks of the *Atocha* and the *Santa Margarita*,

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[48] See also J. Barto Arnold III, "The Platoro Lawsuit Revisited," *Underwater Archaeology: The Proceedings of the Fourteenth Conference on Underwater Archaeology*, Calvin R. Cummings (ed.), Special Publication #7 (San Marino, CA: Fathom Eight, 1986) for a description of the complex, expensive, and lengthy litigation process in which the State of Texas has been engaged to claim, for public benefit, the *Espiritu Santo* wreck off Padre Island. Its efforts proved only partially successful. The case deals primarily with State's rights, specifically, permitting authority and the courts requirement that it pay for or buy back one-third of all artifacts recovered.

BEST AVAILABLE COPY

Box G.—State Historic Shipwreck Legislation

The following States and Trust Territories have, since 1963, adopted legislation to enable management of historic shipwrecks in their waters for public benefit. Most of these laws permit, under certain conditions, some recovery of archaeological materials by private parties. No State has forbidden sport diving on historic shipwrecks :

Alaska	Alaska Stat. 41.35 (1977)
Arizona	Ariz. Rev. Stat. 41.841 (1982)
Colorado	Colo. Rev. Stat. 24.80.401-410 (1973)
Florida	Fla. Stat. Ann. 267 (Supp. 1982)
Georgia	Ga. Code Ann. 12.3 (1981)
Guam	Chpt. XIII. 13985.-5
Hawaii	Hawaii Rev. Stat. 6E (1976)
Indiana	Ind. Stat. Ann. 14.3.3.3-4 (Supp. 1983)
Louisiana	La. Stat. Ann. RS 41.1601 (Supp. 1982)
Maine	Me. Rev. Stat. Ann. 27. 373-378 (1982)
Massachusetts	Mass. Gen. Laws Ann. 6. 179-180 (1974)
Michigan	Mich. Comp. Laws. Ann. 299.51-54 (Supp. 1982)
Minnesota	Minn. Stat. Ann. 138 (1979)
Mississippi	Code Ann. 39.7 (1972)
Montana	Code Ann. 22.3.421-442 (1981)
New Hampshire	Rev. Stat. Ann. 227.C. (Supp. 1981)
New York	Consol. Laws Ann. 14 (McKinney 1982)
North Carolina	Gen. Stat. 121.22-28 (1981)
North Dakota	Century Code 55.021.03.10 (Supp. 1981)
Oregon	Rev. Stat. 358.905 (1983)
Rhode Island	Gen. Laws 42.45.1. (1977)
South Carolina	Code of Laws Ann. 54.7.40. (Supp. 1982)
Texas	Code Ann. 191.01 (1978)
Vermont	Stat. Ann. 22.701. (1978)
Virginia	Code 10.145. (Supp. 1983)
Wisconsin	Stat. Ann. 27.012 (1973)
Northern Mariana Islands	P.L. No. 3-39 11

SOURCE: Anne G. Giesecke, *Journal of Field Archaeology*, "Management of Historic Shipwrecks in the 1980s," 12:108-112, 1985.

discovered in 1971 the first of quantities of gold artifacts from the *Atocha* wreck, submerged 9 miles off the coast of Florida in what both the company and the State believed were territorial waters. Treasure Salvors, Inc., under the stipulations of the Florida Archives and History Act, entered into a contractual arrangement with the State for the sole right to continue search and salvage of the *Atocha*. In 1975, after having recovered nearly $6 million in artifacts and treasure from the wreck site and having learned of an unrelated Supreme Court decision finding that Florida had no interest in or authority over the waters surrounding the *Atocha* site, Treasure Salvors, Inc., severed its contract with the State. It then initiated an action in admiralty court to obtain title to and possession of the wreck. Treasure Salvors asserted that in the case of an abandoned vessel, the finder assumes possession according to long-standing principles of maritime law. The State fought the action and with the intervention of the Federal Government claimed ownership of the wreck. They cited the Outer Continental Shelf Lands Act (OCSLA) which applies to the area in which the *Atocha* lay and the both the Antiquities Act and the Abandoned Property Act, which reflect the concept of English common law on "sovereign prerogative."[49] Jurisdiction of the OCS is controlled by two pieces of legislation, the Submerged Lands Act (143 U.S.C 1301; Public Law 83-31) and the Outer Continental Shelf Lands Act (43 U.S.C. 1331, ff).

The Submerged Lands Act relinquishes to the States full control over all submerged lands extending to 3 nautical miles offshore, except for the gulf coast of Florida and Texas, whose jurisdictions extend 10 nautical miles.[50] Separate acts apply to the submerged lands of the Territories.[51] The OCSLA reserves the submerged lands on the OCS to the Federal Government and subjects them to administrative control by the Secretary of the Interior.

The Submerged Lands Act:

> . . . confirms and establishes the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, provides for the use and

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[49] "The Administrator of the General Services Administration is authorized to make such contracts and provisions as he may deem for the interest of the Government, for the preservation, sale, or collection of any property or the proceeds thereof, which may have been wrecked, abandoned, or become derelict, being within the jurisdiction of the United States and which ought to come to the United States . . ."

[50] 43 U.S.C. 1301 (a)(1),(2) Submerged Lands Act.

[51] Puerto Rico: sec. 8 of the Act of Mar. 2, 1917 (48 U.S.C. 749). Guam, Virgin Islands, and American Samoa: Sec. 1 of the Act of Oct. 5, 1974 (48 U.S.C. 1705). Northern Mariana Islands: Sec. 3 of the Proclamation No. 4726, Feb. 21, 1980 (48 U.S.C. 1681).

control of said lands and resources, and confirms the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

The Act deals largely with purview and mineral exploitation but not with the disposition of man-made or cultural objects—historic shipwrecks and other submerged archaeological sites.

Federal courts upheld the claims of Treasure Salvors, Inc., stating that the United States through the OCSLA asserted ownership of and jurisdiction over mineral and other natural resources, but not cultural resources. The Abandoned Property Act applied only to property let go or lost during the Civil War, clearly not the correct historic period of the cultural materials under litigation. The courts also concluded that the English rule of "sovereign prerogative" never "took root" in America, that the "American Rule" has prevailed, which places ownership with the finder. When Treasure Salvors, Inc., in a further action tried to compel Florida to release 25 percent of the treasure still retained under the void salvage contract, the State countered by attempting to bar the company's claim under the 11th amendment to the Constitution. The 11th amendment prohibits citizens from suing States in Federal courts, but the Fifth Circuit Court rejected Florida's action, arguing that Treasure Salvors, Inc., was not prohibited under the 11th amendment because its suit was against individuals employed by the State, not the State itself.

The 11th amendment, however, has been successfully used in Massachusetts to thwart salvors' maritime claims.[52] The court held that the State had a "colorable claim of title" to the pirate ship *Whydah*, which sank off its coast in April 1717.[53] However, in a recent case testing the State's laws regarding excavations within its coastal waters, a State court ruled against the State's claim. The ruling is expected to be appealed to the State Supreme Judicial Court.[54]

By contrast, in another recent case, *Klein* v. *Unidentified Wreck and Abandoned Sailing Vessel*, the United States Court for the Southern District of Florida found for the Federal Government on the issue of ownership of excavated shipwreck items because they had been embedded in land owned by the United States and administered by the National Park Service.

In *Cobb Coin, Inc.*, conflict again focused on the State of Florida, whose submerged lands contain the remains of an unknown number of Spanish treasure galleons from the Plate Fleet, which sank off the Florida coast in 1715, while bound from the New World to Europe. Cobb Coin, Inc., formed after the president of Treasure Salvors' dissolved that company, began a search in 1978 for remains of the fleet. After locating and recovering artifacts thought to be part of a galleon, he then initiated an action in Federal admiralty court requesting either a declaration of ownership of the shipwreck or compensation for salvage carried out at the site. Because the site lay well within Florida's 3-nautical mile offshore limit, the State intervened, asking the court instead to declare it the owner and order restitution for all items culled from the wreck. The State justified its claims on the basis of its antiquities law, the Florida Archives and History Act and sought criminal action against Cobb Coin, Inc.

The Federal district admiralty court declined to apply certain parts of Florida's marine archaeology statute, seeing it in conflict on certain points with preemptive Federal admiralty law.[55] It deemed the State's requirement for a license to explore State waters in conflict with the maritime principle that potential salvors or finders be free to search the open waters for salvable sites. Maritime law clearly encourages prompt recovery of goods; Florida's would accomodate painstaking and time-consuming scientific research. Florida's law permits a licensee the exclusive right to salvage an area "regardless of diligence or success." This allowance is at odds with the maritime principle that a salvor's right to act on a wreck is valid only as long as the salvor perseveres as quickly and efficiently as possible, and is reasonably successful in recovering submerged property. Florida grants salvors fixed percentages of artifacts, challenging the maritime concept of reward based on "risk and merit." As a result, the court ruled that historic shipwrecks are subject to the traditional admiralty law of salvage. Although the courts in *Cobb Coin* did acknowledge the cultural value of historic shipwrecks and the importance of their provenance to the public, they still held that such value and importance do not override long established and observed principles of maritime law.

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[52] See, for example, *Maritime Underwater Surveys, Inc.* v. *Unidentified, Wrecked and Abandoned Sailing Vessel*, 717 F.2d 6; *Subaqueous Exploration & Archaeology, Ltd.* v. *Unidentified Wrecked, and Abandoned Vessel*, 577 F. Supp. 597 (d. Md. 1983); and *Cobb Coin I*, 525 F. Supp. 186 (S.D. Fla. 1981).

[53] Douglas Reid Weimer, *Legal Issues Relating to Abandoned Shipwrecks*, Congressional Research Service, 1986.

[54] John H. Kennedy, "State Comes Up Empty in Hunt for Treasure," *Boston Globe*, Tuesday, May 19, 1987, pp. 19-22.

[55] Douglas Reid Weimer, *Legal Issues Relating to Abandoned Shipwrecks*, Congressional Research Service, 1986 for a discussion of the legal issues clouding the treatment of historic shipwrecks in U.S. waters. See also Douglas Shalicross and Anne G. Giesecke, *Recent Developments in Litigation Concerning the Recovery of Historic Shipwrecks*, Syracuse Journal of International Law and Commerce, 10:371-404. See further, Douglas A. Shallcross and Anne G. Giesecke, "The Status of Federal and State Regulation of Underwater Cultural Resources: Lessons of the Treasure Salvors and Cobb Coin Cases," *Underwater Archaeology: The Proceedings of the 14th Conference on Underwater Archaeology*, 1986.

The Abandoned Shipwreck Act of 1987

Since 1979, interested parties have sought passage of legislation to strengthen the ability of States to locate, evaluate, and protect historic shipwrecks located within their submerged lands. Without clear Federal legislation establishing public interest in government ownership of historic submerged vessels, these resources remain at risk through the activities and claims allowed by treasure hunters under admiralty law.

Abandoned shipwreck legislation[56] has been reintroduced before the 100th Congress (H.R. 74; S. 858).[57] The bills, which as introduced are nearly identical,[58] seek to treat historic properties on the seabed more like historic properties on land and:

- assert U.S. ownership and transfers to the States title to abandoned shipwrecks that are embedded in the submerged lands of a State, in coralline formations, or included in or determined eligible for inclusion in the National Register of Historic Places;[59]
- declare that the laws of salvage and of finds do not apply to these abandoned shipwrecks;
- specify that the Act will not affect any suit filed before the date of enactment;
- confirm Federal ownership of abandoned shipwrecks on Federal lands;
- retain any existing Federal admiralty and salvage law for all shipwrecks not covered by these bills; and
- direct the Advisory Council on Historic Preservation to develop guidelines to assist the States and the Federal Government in carrying out their responsibilities and to allow for non-injurious recreational exploration and private sector salvage of shipwreck sites.

The bills do not effect admiralty claims for the ownership of shipwrecks within the Nation's waters between the 3-mile offshore State-controlled limit and the 200-nautical-mile limit of the Outer Continental Shelf.

While treasure hunters and others resist legislation to limit their exploitation of any shipwrecks for profit or recreation, some preservationists express serious misgivings about the bills because they do not explicitly prohibit salvaging at culturally significant sites. They fear that the differing approaches to managing submerged cultural resources, legalized in 27 States so far, would render appropriate and consistent policies difficult to implement nationwide. They also point out that they regard as critical the ability of State programs to allow for the retention of artifacts. They cite the inadequacy of models, such as Florida's, which permits treasure hunters to contract with the State, survey and excavate, and retain 75 percent of what they find as payment for services.

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[56] The Abandoned Shipwreck Act of 1985 (H.R. 3558 and S. 2569) failed to pass the 99th Congress.

[57] On August 5, 1987, shortly after this background paper went to press, H.R. 74 was marked up and reported out of the Oceanography Subcommittee of the House Committee on Merchant Marine and Fisheries. It must still be considered by the full committee and by the House Committee on Interior and Insular Affairs. The Senate has not yet acted on S. 858.

[58] The markup made several important changes in H.R. 74. It now provides for an Advisory Committee to "prepare and publish . . . guidelines for use by the States in developing legislation and regulations to carry out their responsibilities under this Act." It also provides that if, "within 5 years after the date of the enactment of this Act," a State has failed to develop a plan consistent with guidelines established by the Advisory Committee, the title to a State's historic shipwrecks then reverts to the United States. Finally, the markup added a provision that the Secretary of the Interior was responsible for managing "all abandoned shipwrecks to which the United States reasserts title . . . in a manner consistent with the guidelines . . ."

[59] This transfer clearly resolves the issue of legal jurisdiction over shipwrecks and the authority of the States to regulate salvage in their waters.

Texas' model, by contrast, is one of the few which do not allow the transfer of publicly owned historic artifacts to private ownership.[60] However, as demonstrated by the cases cited above, legislative action may be necessary to impart across-the-board protection for shipwrecks, which are important elements of the heritage of the United States.

ISSUE C: Underwater and maritime cultural resources are vulnerable to a wide variety of natural and manmade threats.

Table 6 summarizes the various threats to which underwater archaeological and maritime cultural resources are subject. Historic coastal settlements are jeopardized by changes in land use; historic lighthouses are endangered by land subsidence, erosion, and neglect when technological advances render them obsolete as aids to navigation. Historic floating vessels, if not maintained and renewed, are rendered unusable by the rapid spread of rot and rust. "Ships are less accomodating than buildings, which can stand untouched for generations and survive."[61] In addition, traditional boatbuilding and navigation skills are being lost as a result of the introduction of modern technology in the practice of these skills.

Prehistoric sites close to shore are damaged by wave action and by oil and gas exploration when they lie on the Outer Continental Shelf. As noted earlier, treasure salvors can inflict grave damage to historic shipwrecks and may, in the process of searching out and extracting treasure and other commercially valuable features or contents, completely destroy them and any significant archaeological information they might convey.

Even though many treasure salvors cannot afford the kinds of sophisticated and powerful remote sensing locational techniques developed for the space program and the oil, gas, and mineral industries, a few have acquired other marine technologies and, in recent years, gained access to many significant sites. Table 7 lists a few significant historic shipwrecks that have been exploited for treasure. Shipwrecks are attracting the interest of increasing numbers of groups and individuals able to invest in underwater exploration. One of the most dramatic examples involves the *R.M.S. Titanic*, which is located 2½ miles below the surface in international waters, about 350 miles southwest of Newfoundland. An American oil company executive and a Hollywood broadcasting group, among others, are collaborating with scientists from the Institute for Research and Exploitation of the Sea, an agency of the French government, to retrieve artifacts and open three safes from the wreck. The project, which will involve spending at least $3 million, will consist of a series of 10 dives by miniature submarine, and broadcasts of the event live from the seafloor. The project's expedition team has used a three-man mini-sub to retrieve a leather, "doctor's-style valise" filled with jewels, bank notes and other valuables, and a safe which is believed to have be-

Table 6.—Threats to Underwater Archaeological and Maritime Resources[a]

Natural threats:
- Corrosion/concretion of metals
- Earthquakes
- Erosion—of the coastline, river, and stream banks
- Floods
- Storms
- Subsidence
- Wave action
- Wood-borers
- Volcanoes

Man-made Threats:
- Anchoring—particularly of freighters
- Federal projects—dredging, naval base development, dam and reservoir construction, channelization, etc.
- Looting
- Lack of maintenance (maritime resources)
- Neglect
- Non-conservation of materials recovered from underwater
- Oil/Gas/Mineral extraction
- Pipelines
- Pollution
- Salvaging/Treasure hunting
- Shellfishing
- Shore facility expansion—ports, marinas, recreation areas, airports
- Sport diving
- Vandalism

[a] Not listed in priority order.

SOURCE: Office of Technology Assessment, 1987.

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[60] Daniel J. Lenihan, National Park Service, personal communication, March 1987.

[61] Statement of Marcia Myers, Vice President for Maritime Preservation, National Trust for Historic Preservation, before the Subcommittee on National Parks and Public Lands of the House Committee on Interior and Insular Affairs, on H.R. 1044, a bill to establish the National Maritime Museum at San Francisco, March 26 1987.

Table 7.—Representative Historic Shipwrecks Exploited for Treasure

- *Espiritu Santo*: One of the 1554 New Spain fleet wrecks located off Padre Island, Texas;
- *Nuestra Senora de Atocha*: A 16th century Spanish galleon off the Florida Keys;
- *Whydah*: An 18th century English pirate ship off the coast of Massachusetts;
- *H.M.S. DeBraak*: An 18th century Dutch-built English privateer off Lewes, Delaware;
- *Nuestra Senora de la Maravilla*: a large 16th century Spanish galleon 50 miles north of Grand Bahama Island.

SOURCE: Office of Technology Assessment, 1987.

longed in the ship's assistant pursor's office.[62] The recovery venture began in the summer of 1987, with completion scheduled for September 10.

Recovery of items from the *R.M.S. Titanic* is being protested by many who believe that the site should remain untouched as a memorial to those who perished in the ship's sinking.[63] Others argue that items from the *Titanic* possess historical value precisely because they come from the shipwreck and that salvage operations should continue on the basis that international law provides for the salvage of vessels lost at sea.[64]

Some treasure salvors employ archaeologists to oversee or carry out tasks that can minimize damage to sites. Many archaeologists, however, believe that the basic goals and interests of archaeological research and treasure salvaging are inherently antithetical, and that when profit is the motive for exploitation of shipwrecks, scientific research and the shipwrecks themselves must inevitably suffer. Particularly when excavation of a wreck requires the application of expensive technology, or the salvor is operating on a speculative financial shoestring, as many do, it is likely that the recovery of objects having financial value will take priority over the recovery and conservation of material that may be priceless to archaeological research but of little or no commercial value.[65]

Treasure salvors who have become aware of the importance of historical research, may contract for the study of historical documents such as those found within two particularly rich archives—El Archivo General de Indias in Seville, Spain, and El Archivo General de la Nacion in Mexico City, Mexico. These archives, which are highly valued for a broad range of historical research, contain thousands of records from the 16th through the 19th centuries on all aspects of exploration, seafaring, and trade sponsored by the Spanish crown in the New World. Much of this documentation provides detailed information on the passengers and cargos carried by the ships that traveled back and forth between Europe and the Americas, as well as on disasters at sea.[66]

ISSUE D: There is a critical need for a Federally sponsored facility for underwater archaeology and maritime preservation.

Most participants in the OTA study urged the formation of a federally funded institution devoted to providing:

- accurate information on current preservation technologies for the research, location, analysis, and management of prehistoric and historic structures, objects, and sites;
- information on technologies developed in other fields for possible application to preservation, namely—technology transfer;
- training in preservation technologies;
- ongoing research;
- conservation laboratories;
- interdisciplinary teams capable of intervening on an emergency basis in response to particular technical preservation problems;
- a clearinghouse for preservation project information (Federal, State, local, private) to expedite coordination; and
- the leading technical preservation database.

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[62] Ken Ringle, "Breathtaking Collection of Jewels Discovered at Titanic Site," *Washington Post*, Friday, August 21, 1987.

[63] "Television Special From Titanic Is Planned," *New York Times*, February 1987.

[64] See, for example, William F. Buckley, Jr., "Let Them Sell the Titanic's 'Treasure,'" *Washington Post*, August 17, 1987, p. A19.

[65] Thomas F. King, Advisory Council on Historic Preservation, personal communication, 1987.

[66] Stanley Hordes, Historical Consultant, personal communication, 1986. See also "Translated Documents Capture Ambience and Aroma of the Nina," *The New York Times*, Oct. 14, 1986.

Technologies for Underwater Archaeology & Maritime Preservation

Background Paper

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side-scan sonar and sub-bottom acoustic profiler located an anomalous signal in the area in which the wreck was thought to lie.

In raising the *Mary Rose*, British archaeologists and engineers developed a specially engineered recovery apparatus, the cradle of which was designed to continue supporting the hull in dry dock through the initial conservation phases. It was the product of extensive multi-professional collaboration. The Mary Rose project will serve as a test bed for conservation chemistry and allow chemists to determine the best methods for conserving waterlogged wood.[42]

The *Mary Rose* also represents an important collaboration between sport divers and professional preservationists. The wreck was discovered by members of the British Sub-Aqua Club, who worked closely with supervising archaeologists. Without these essential volunteers, successful excavation, raising, and subsequent conservation would have been impossible.

The relatively successful restorations of both the *Wasa* and the *Mary Rose* depended on long-term commitments by governments, preservationists, and scientists to engender public interest, and to obtain reliable funding, proper research and interpretive facilities, and access to technical expertise.

ISSUE B: The lack of Federal legislation to determine jurisdiction over and ownership of historic shipwrecks has severely hampered most efforts to protect them for the public.

Recent legislation,[43] and more effective enforcement of older preservation laws, have led to improved protection of archaeological sites on lands controlled by the Federal Government. Submerged archaeological sites under Federal administration are subject to the same laws, regulations, and management policies governing sites on dry land. These laws, regulations, and policies are intended to shield submerged sites from such destructive activities as mineral exploration and dredging, and also limit private access to them if they lie within national parks and marine sanctuaries. However, the status of historic shipwrecks situated outside national parks and marine sanctuaries, is adversely affected by an additional, highly complex body of law governing maritime activities, as well as ancient legal principles, such as property ownership, admiralty law, and the law of finds.[44] Further complicating matters are the several different marine jurisdictions (box F). Other countries such as Australia, Canada, Cyprus, England, Norway, and Sweden have enacted national laws regulating the management of all cultural resources within the waters of their outer continental shelves.[45]

Maritime salvaging tradition lies at the heart of continuing conflict over the treatment of U.S. historic shipwrecks, which has pitted private salvors and State preservation officers against each other. This tradition, established to motivate privately conducted rescue of vessels in peril, rewards salvors for their attempts, or grants them possession of abandoned vessels and their contents. However, maritime law treats both historic and modern vessels identically, considering the time of abandonment, whether 2 or 200 years ago, irrelevant.

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[42] Margaret Rule, "The Raising of the *Mary Rose,*" *The Illustrated London News*, October 1982.

[43] The Archeological and Historical Preservation Act of 1974 (Public Law 93-291; 88 Stat. 174) which amended the Reservoir Salvage Act of 1960 (Public Law 86-253; 74 Stat. 220; 16 U.S.C. 469-469c) and The Archeological Resources Protection Act of 1979 (Public Law 96-95; 93 Stat. 712, 16 U.S.C. 470) and the 1980 amendments to National Historic Preservation Act of 1966 (Public Law 96-515; Stat. 2997) among others.

[44] Admiralty law of salvage rewards the person or persons who assist in saving a ship in peril and requires payment by its owner of a salvage fee. If no owner is found, the ship and its contents may be sold to raise the award. The law of finds awards lost or abandoned property to the person or persons finding it. "The law of finds and the law of salvage are not always clearly distinguished by admiralty courts." Thompson M. Mayes, "Current Legal Issues in the Law of Historic Shipwrecks," *A Memorandum for the Office of General Counsel*, National Trust for Historic Preservation, October 1986.

[45] See P.J. O'Keefe, *Current Developments Regarding Regulation of Marine Archaeology Outside Territorial Waters*, University of Sydney; cited by Douglas Shallcross and Anne Giesecke, "The Status of Federal and State Regulation of Underwater Cultural Resources: Lessons of the Treasure Salvors and Cobb Coin Cases," *Underwater Archaeology: The Proceedings of the 14th Conference on Underwater Archaeology, 1986*. See also George R. Fisher, *Legal Considerations in Underwater Archaeology*, National Park Service, Southeast Archeological Center, Tallahassee, Fl (paper presented at the annual meeting of the Society on Underwater Archaeology, Philadelphia, PA, January 1976).

Box F.—The Seven Marine Jurisdictions

U.S. Marine Jurisdictions Comprise:

1. internal waters (those inside the coastline);
2. the Territorial Sea (three nautical miles from the mean low tide) in which jurisdiction is the
   as if the area were dry land, under the State governments;
3. the Contiguous Zone (12 nautical miles from State waters) within which the Federal Governm
   controls customs, rights of passage, health regulations, military activitiies, and navigation;
4. the Outer Continental Shelf (the seabed beyond the Territorial Sea to slightly beyond 200
   on which the Federal govenment exercises controls relating to natural resource exploitatio
5. the High Seas, the area beyond the Outer Continental Shelf to which international law
6. the Exclusive Economic Zone (see below); and
7. the fishery Conservation Zone (16 U.S.C. 1811), extending to a distance of 200 nautical mi
   the baseline from which the breadth of the territorial sea is measured.

These definitions are, for the most part, recognized by other nations. Further definitions co

- Navigable inland waters are those which were navigable by any kind of vessel on the date a
  entered the Union. The present accepted legal definition, however, covers those waters which
  usable for interstate or foreign commerce. The United States controls operations on and under navi
  ble inland waters, but the adjoining State owns the water and submerged beds.
- Non-navigable inland waters—the owner of the shoreline (riparian owner) is the owner of the
  and the subsurface land under it to the center of the body of water.

The Exclusive Economic Zone (EEZ) is a zone contiguous to the Territorial Sea, including zones
tiguous to the territorial seas of the United States, Puerto Rico, the Commonwealth of the Northern Ma
ana Islands (to the extent consistent with the Covenant and the United States Trusteeship Agreem
and U.S. overseas territories and possessions. The EEZ extends to a distance 200 nautical miles fro
baseline from which the breadth of the Territorial Sea is measured. Within the EEZ the United States
to the extent permitted by International Law:

- sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resour
  both living and non-living, of the seabed and subsoil and the superajacent waters and with
  to other activities for the economic exploitation and exploration of the zone; such as the prod
  tion of energy from the water, currents, and winds; and
- jurisdiction with regard to the establishment and use of artificial islands, and the installation
  structures having economic purposes, and the protection and preservation of the marine env
  ment. Proclamation No. 5030, *Exclusive Economic Zone of the United States*, Mar. 10, 19
  F.R. 10605.

SOURCE: Office of Technology Assessment, 1987.

Maritime law is in sharp contrast with preservation law, in which prehistoric and historic sites and objects found on public land are considered to be held in trust by the U.S. Government for all its citizens. As such, according to a substantial set of preservation laws (Table 2), cultural resources on public lands must be managed for the public good.

In the oceans surrounding the U.S. coast, private salvors, particularly treasure hunters, search out gold and silver items, coins, jewels, and highly valued antiquities at wreck sites, employing such devices as dredges, blowers, and explosives. They may ruin such contextual remnants as hulls, furniture, armament, and cargo, leaving sites unfit for proper scientific investigation, and for public display and education. Because only an extremely small number of wrecks contain such desirable artifacts, their searches "have destroyed the archaeological potential of hundreds of historic, but not commercially promising sites."[46]

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[46] See Carol Weare, "Saving Shipwrecks: An Underwater Imbroglio," *Place*, December 1983.

Photo credit: National Park Service Submerged Cultural Resources Unit

Submerged Cultural Resources Unit diver examines the bow of *America*, sunk at Isle Royale, MI, in 1928.

Interest Groups

Historic shipwrecks are the focus of three competing groups:

1. *Treasure Hunters.*—As potential profiteers from the sale of gold, silver, gems, and other valuables, and as successful claimants of historic wrecks in Florida and Texas, they are the most aggressive seekers of these fragile resources, even when, as is often the case, their quests result in financial losses.[47] Although only about a dozen treasure hunters operate full time, their sometimes flamboyant, high-risk activities have captured the public interest. They have, through assiduous lobbying in Congress, been instrumental in the repeated defeats (since 1979) of earlier versions of the Abandoned Shipwreck Act. One of the most popular means of financing treasure hunting explorations involves investors who form partnerships, syndicates, or other business relationships. Salvaging ventures have been stimulated by liberal tax shelters for investors in limited partnerships. However, the tax reforms enacted by the 99th Congress are likely to render some salvage efforts less attractive because they place greater restrictions on the losses investors may claim from high risk, limited partnerships.
2. *Underwater Archaeologists and Maritime Historians.*—They are joined by Federal and State Historic Preservation Officers, general and nautical museum curators, and conservators responsible to governmental agencies and universities for the care of recovered objects. This group is interested primarily in preserving and conducting research on maritime and underwater archaeological sites, and interpreting them to the public. Historic shipwrecks provide information on such subjects of historical and public interest as commerce, naval warfare, exploration, and vessels—their construction, cargo, passengers, and the details of their loss at sea.
3. *Sport Divers.*—This interest group is by far

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[47] Anne G. Giesecke, Statement [illegible] Subcommittee on Oceanography, [illegible]

the largest. The Conference on Underwater Archaeology and the Society for Historical Archaeology estimate that there are more than 2 million sport divers in the United States, many of whom find diving on wrecks an enjoyable, exciting, and educational pastime. Along with fishermen, sport divers locate the bulk of all shipwrecks within U.S. coastal and inland waters. They collect artifacts, and also photograph and study the histories of undersea wrecks avocationally. Many volunteer their services to qualified archaeologists. Some, however, also loot and disturb sites. Sport divers strongly advocate their right under protective shipwreck legislation to legal access to submerged wrecks. Their principal membership and trade organizations, such as the Diving Equipment Manufacturer's Association, have supported the latest version of the Abandoned Shipwreck Bill (H.R. 74 and S. 858).

Litigation Over Ownership of Historic Shipwrecks

As noted earlier, in the absence of Federal legislation to safeguard historic shipwrecks, 27 States have passed antiquities statutes to broaden their jurisdiction and exert regulatory control over significant wrecks within their territorial waters (box G). Yet several Federal court cases, disputed over more than a decade, have denied the States authority to enforce their statutes. These cases, dealing with competing claims to historic shipwrecks between commercial salvors and State preservationists, have also called into question the validity not only of State governments, but the Federal Government, in controlling the recovery of archaeological materials at significant sites.

Two major litigations in particular have proved lengthy, complex,[48] costly, and ultimately inconclusive for preservation purposes because of the highly inconsistent and even contradictory rulings emanating from State, admiralty, and appellate courts. *Treasure Salvors, Inc.* v. *Unidentified Wreck and Abandoned Sailing Vessel* (cases I,II, and III) concerned efforts by the State of Florida and the Federal Government to exercise regulatory control over commercial salvaging at historic shipwreck sites on the Outer Continental Shelf (OCS). *Cobb Coin, Inc.* v. *Unidentified Wreck and Abandoned Sailing vessel* was part of efforts by the State of Florida to oversee recovery at historic shipwrecks within its three-mile territorial limit. The *Treasure Salvors* cases even involved claims by a rival salvor and Supreme Court interpretation of the merits of their claims.

Photo credit: Mitch Kezar, National Park Service

Sport divers begin a dive at Isle Royale National Park on a shipwreck bouyed by the National Park Service for visiting sport divers.

Treasure Salvors, Inc., after searching for the wrecks of the *Atocha* and the *Santa Margarita*,

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[48] See also J. Barto Arnold III, "The Platoro Lawsuit Revisited," *Underwater Archaeology: The Proceedings of the Fourteenth Conference on Underwater Archaeology*, Calvin R. Cummings (ed.), Special Publication #7 (San Marino, CA: Fathom Eight, 1986) for a description of the complex, expensive, and lengthy litigation process in which the State of Texas has been engaged to claim, for public benefit, the *Espiritu Santo* wreck off Padre Island. Its efforts proved only partially successful. The case deals primarily with State's rights, specifically, permitting authority and the courts requirement that it pay for or buy back one-third of all artifacts recovered.

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Box G.—State Historic Shipwreck Legislation

The following States and Trust Territories have, since 1963, adopted legislation to enable management of historic shipwrecks in their waters for public benefit. Most of these laws permit, under certain conditions, some recovery of archae-ological materials by private parties. No State has forbidden sport diving on historic shipwrecks.

Alaska	Alaska Stat. 41.35 (1977)
Arizona	Ariz. Rev. Stat. 41.841 (1982)
Colorado	Colo. Rev. Stat. 24.80.401-410 (1973)
Florida	Fla. Stat. Ann. 267 (Supp. 19
Georgia	Ga. Code Ann. 12.3 (1981)
Guam	Chpt. XIII. 13985.-5
Hawaii	Hawaii Rev. Stat. 6E (1976)
Indiana	Ind. Stat. Ann. 14.3.3.3-4 (Sup 1983)
Louisiana	La. Stat. Ann. RS 41.1601 (Supp. 1982)
Maine	Me. Rev. Stat. Ann. 27. 373-378 (1982)
Massachusetts	Mass. Gen. Laws Ann. 6. 179-180 (1974)
Michigan	Mich. Comp. Laws. Ann. 299.51-54 (Supp. 1982)
Minnesota	Minn. Stat. Ann. 138 (1979)
Mississippi	Code Ann. 39.7 (1972)
Montana	Code Ann. 22.3.421-442 (1981)
New Hampshire	Rev. Stat. Ann. 227.C. (Supp. 1981)
New York	Consol. Laws Ann. 14 (McKinn 1982)
North Carolina	Gen. Stat. 121.22-28 (1981)
North Dakota	Century Code 55.021.03.10 (Supp. 1981)
Oregon	Rev. Stat. 358.905 (1983)
Rhode Island	Gen. Laws 42.45.1. (1977)
South Carolina	Code of Laws Ann. 54.7.40. (Sup 1982)
Texas	Code Ann. 191.01 (1978)
Vermont	Stat. Ann. 22.701. (1978)
Virginia	Code 10.145. (Supp. 1983)
Wisconsin	Stat. Ann. 27.012 (1973)
Northern Mariana Islands	P.L. No. 3-39 11

SOURCE: Anne G. Giesecke, *Journal of Field Archeology* agement of Historic Shipwrecks in the 1980s," 12:10 1985.

discovered in 1971 the first of quantities of gold artifacts from the *Atocha* wreck, submerged 9 miles off the coast of Florida in what both the company and the State believed were territorial waters. Treasure Salvors, Inc., under the stipulations of the Florida Archives and History Act, entered into a contractual arrangement with the State for the sole right to continue search and salvage of the *Atocha*. In 1975, after having recovered nearly $6 million in artifacts and treasure from the wreck site and having learned of an unrelated Supreme Court decision finding that Florida had no interest in or authority over the waters surrounding the *Atocha* site, Treasure Salvors, Inc., severed its contract with the State. It then initiated an action in admiralty court to obtain title to and possession of the wreck. Treasure Salvors asserted that in the case of an abandoned vessel, the finder assumes possession according to long-standing principles of maritime law. The State fought the action and with the intervention of the Federal Government claimed ownership of the wreck. They cited the Outer Continental Shelf Lands Act (OCSLA) which applies to the area in which the *Atocha* lay and the both the Antiquities Act and the Abandoned Property Act, which reflect the concept of English common law on "sovereign prerogative."[49] Jurisdiction of the OCS is controlled by two pieces of legislation, the Submerged Lands Act (143 U.S.C 1301; Public Law 83-31) and the Outer Continental Shelf Lands Act (43 U.S.C. 1331, ff).

The Submerged Lands Act relinquishes to the States full control over all submerged lands extending to 3 nautical miles offshore, except for the gulf coast of Florida and Texas, whose jurisdictions extend 10 nautical miles.[50] Separate acts apply to the submerged lands of the Territories.[51] The OCSLA reserves the submerged lands on the OCS to the Federal Government and subjects them to administrative control by the Secretary of the Interior.

The Submerged Lands Act:

> . . . confirms and establishes the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, provides for the use and

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[49] "The Administrator of the General Services Administration is authorized to make such contracts and provisions as he may deem for the interest of the Government, for the preservation, sale, or collection of any property or the proceeds thereof, which may have been wrecked, abandoned, or become derelict. being within the jurisdiction of the United States and which ought to come to the United States . . ."

[50] 43 U.S.C. 1301 (a)(1),(2) Submerged Lands Act.

[51] Puerto Rico: sec. 8 of the Act of Mar. 2, 1917 (48 U.S.C. 749). Guam, Virgin Islands, and American Samoa: Sec. 1 of the Act of Oct. 5, 1974 (48 U.S.C. 1705). Northern Mariana Islands: Sec. 3 of the Proclamation No. 4726, Feb. 21, 1980 (48 U.S.C. 1681).

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control of said lands and resources, and confirms the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

The Act deals largely with purview and mineral exploitation but not with the disposition of manmade or cultural objects—historic shipwrecks and other submerged archaeological sites.

Federal courts upheld the claims of Treasure Salvors, Inc., stating that the United States through the OCSLA asserted ownership of and jurisdiction over mineral and other natural resources, but not cultural resources. The Abandoned Property Act applied only to property let go or lost during the Civil War, clearly not the correct historic period of the cultural materials under litigation. The courts also concluded that the English rule of "sovereign prerogative" never "took root" in America, that the "American Rule" has prevailed, which places ownership with the finder. When Treasure Salvors, Inc., in a further action tried to compel Florida to release 25 percent of the treasure still retained under the void salvage contract, the State countered by attempting to bar the company's claim under the 11th amendment to the Constitution. The 11th amendment prohibits citizens from suing States in Federal courts, but the Fifth Circuit Court rejected Florida's action, arguing that Treasure Salvors, Inc., was not prohibited under the 11th amendment because its suit was against individuals employed by the State, not the State itself.

The 11th amendment, however, has been successfully used in Massachusetts to thwart salvors' maritime claims.[52] The court held that the State had a "colorable claim of title" to the pirate ship *Whydah*, which sank off its coast in April 1717.[53] However, in a recent case testing the State's laws regarding excavations within its coastal waters, a State court ruled against the State's claim. The ruling is expected to be appealed to the State Supreme Judicial Court.[54]

By contrast, in another recent case, *Klein* v. *Unidentified Wreck and Abandoned Sailing Vessel*, the United States Court for the Southern District of Florida found for the Federal Government on the issue of ownership of excavated shipwreck items because they had been embedded in land owned by the United States and administered by the National Park Service.

In *Cobb Coin, Inc.*, conflict again focused on the State of Florida, whose submerged lands contain the remains of an unknown number of Spanish treasure galleons from the Plate Fleet, which sank off the Florida coast in 1715, while bound from the New World to Europe. Cobb Coin, Inc., formed after the president of Treasure Salvors' dissolved that company, began a search in 1978 for remains of the fleet. After locating and recovering artifacts thought to be part of a galleon, he then initiated an action in Federal admiralty court requesting either a declaration of ownership of the shipwreck or compensation for salvage carried out at the site. Because the site lay well within Florida's 3-nautical mile offshore limit, the State intervened, asking the court instead to declare it the owner and order restitution for all items culled from the wreck. The State justified its claims on the basis of its antiquities law, the Florida Archives and History Act and sought criminal action against Cobb Coin, Inc.

The Federal district admiralty court declined to apply certain parts of Florida's marine archaeology statute, seeing it in conflict on certain points with preemptive Federal admiralty law.[55] It deemed the State's requirement for a license to explore State waters in conflict with the maritime principle that potential salvors or finders be free to search the open waters for salvable sites. Maritime law clearly encourages prompt recovery of goods; Florida's would accomodate painstaking and time-consuming scientific research. Florida's law permits a licensee the exclusive right to salvage an area "regardless of diligence or success." This allowance is at odds with the maritime principle that a salvor's right to act on a wreck is valid only as long as the salvor perseveres as quickly and efficiently as possible, and is reasonably successful in recovering submerged property. Florida grants salvors fixed percentages of artifacts, challenging the maritime concept of reward based on "risk and merit." As a result, the court ruled that historic shipwrecks are subject to the traditional admiralty law of salvage. Although the courts in *Cobb Coin* did acknowledge the cultural value of historic shipwrecks and the importance of their provenance to the public, they still held that such value and importance do not override long established and observed principles of maritime law.

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[52] See, for example, *Maritime Underwater Surveys, Inc.* v. *Unidentified, Wrecked and Abandoned Sailing Vessel*, 717 F.2d 6; *Subaqueous Exploration & Archaeology, Ltd.* v. *Unidentified Wrecked, and Abandoned Vessel*, 577 F. Supp. 597 (d. Md. 1983); and *Cobb Coin I*, 525 F. Supp. 186 (S.D. Fla. 1981).

[53] Douglas Reid Weimer, *Legal Issues Relating to Abandoned Shipwrecks*, Congressional Research Service, 1986.

[54] John H. Kennedy, "State Comes Up Empty in Hunt for Treasure," *Boston Globe*, Tuesday, May 19, 1987, pp. 19-22.

[55] Douglas Reid Weimer, *Legal Issues Relating to Abandoned Shipwrecks*, Congressional Research Service, 1986 for a discussion of the legal issues clouding the treatment of historic shipwrecks in U.S. waters. See also Douglas Shallcross and Anne G. Giesecke, *Recent Developments in Litigation Concerning the Recovery of Historic Shipwrecks*, Syracuse Journal of International Law and Commerce, 10:371-404. See further, Douglas A. Shallcross and Anne G. Giesecke, "The Status of Federal and State Regulation of Underwater Cultural Resources: Lessons of the Treasure Salvors and Cobb Coin Cases," *Underwater Archaeology: The Proceedings of the 14th Conference on Underwater Archaeology*, 1986.

The Abandoned Shipwreck Act of 1987

Since 1979, interested parties have sought passage of legislation to strengthen the ability of States to locate, evaluate, and protect historic shipwrecks located within their submerged lands. Without clear Federal legislation establishing public interest in government ownership of historic submerged vessels, these resources remain at risk through the activities and claims allowed by treasure hunters under admiralty law.

Abandoned shipwreck legislation[56] has been reintroduced before the 100th Congress (H.R. 74; S. 858).[57] The bills, which as introduced are nearly identical,[58] seek to treat historic properties on the seabed more like historic properties on land and:

- assert U.S. ownership and transfers to the States title to abandoned shipwrecks that are embedded in the submerged lands of a State, in coralline formations, or included in or determined eligible for inclusion in the National Register of Historic Places;[59]
- declare that the laws of salvage and of finds do not apply to these abandoned shipwrecks;
- specify that the Act will not affect any suit filed before the date of enactment;
- confirm Federal ownership of abandoned shipwrecks on Federal lands;
- retain any existing Federal admiralty and salvage law for all shipwrecks not covered by these bills; and
- direct the Advisory Council on Historic Preservation to develop guidelines to assist the States and the Federal Government in carrying out their responsibilities and to allow for non-injurious recreational exploration and private sector salvage of shipwreck sites.

The bills do not effect admiralty claims for the ownership of shipwrecks within the Nation's waters between the 3-mile offshore State-controlled limit and the 200-nautical-mile limit of the Outer Continental Shelf.

While treasure hunters and others resist legislation to limit their exploitation of any shipwrecks for profit or recreation, some preservationists express serious misgivings about the bills because they do not explicitly prohibit salvaging at culturally significant sites. They fear that the differing approaches to managing submerged cultural resources, legalized in 27 States so far, would render appropriate and consistent policies difficult to implement nationwide. They also point out that they regard as critical the ability of State programs to allow for the retention of artifacts. They cite the inadequacy of models, such as Florida's, which permits treasure hunters to contract with the State, survey and excavate, and retain 75 percent of what they find as payment for services.

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[56] The Abandoned Shipwreck Act of 1985 (H.R. 3558 and S. 2569) failed to pass the 99th Congress.

[57] On August 5, 1987, shortly after this background paper went to press, H.R. 74 was marked up and reported out of the Oceanography Subcommittee of the House Committee on Merchant Marine and Fisheries. It must still be considered by the full committee and by the House Committee on Interior and Insular Affairs. The Senate has not yet acted on S. 858.

[58] The markup made several important changes in H.R. 74. It now provides for an Advisory Committee to "prepare and publish . . . guidelines for use by the States in developing legislation and regulations to carry out their responsibilities under this Act." It also provides that if, "within 5 years after the date of the enactment of this Act," a State has failed to develop a plan consistent with guidelines established by the Advisory Committee, the title to a State's historic shipwrecks then reverts to the United States. Finally, the markup added a provision that the Secretary of the Interior was responsible for managing "all abandoned shipwrecks to which the United States reasserts title . . . in a manner consistent with the guidelines . . ."

[59] This transfer clearly resolves the issue of legal jurisdiction over shipwrecks and the authority of the States to regulate salvage in their waters.

Texas' model, by contrast, is one of the few which do not allow the transfer of publicly owned historic artifacts to private ownership.[60] However, as demonstrated by the cases cited above, legislative action may be necessary to impart across-the-board protection for shipwrecks, which are important elements of the heritage of the United States.

ISSUE C: Underwater and maritime cultural resources are vulnerable to a wide variety of natural and manmade threats.

Table 6 summarizes the various threats to which underwater archaeological and maritime cultural resources are subject. Historic coastal settlements are jeopardized by changes in land use; historic lighthouses are endangered by land subsidence, erosion, and neglect when technological advances render them obsolete as aids to navigation. Historic floating vessels, if not maintained and renewed, are rendered unusable by the rapid spread of rot and rust. "Ships are less accomodating than buildings, which can stand untouched for generations and survive."[61] In addition, traditional boatbuilding and navigation skills are being lost as a result of the introduction of modern technology in the practice of these skills.

Prehistoric sites close to shore are damaged by wave action and by oil and gas exploration when they lie on the Outer Continental Shelf. As noted earlier, treasure salvors can inflict grave damage to historic shipwrecks and may, in the process of searching out and extracting treasure and other commercially valuable features or contents, completely destroy them and any significant archaeological information they might convey.

Table 6.—Threats to Underwater Archaeological and Maritime Resources[a]

Natural threats:
- Corrosion/concretion of metals
- Earthquakes
- Erosion—of the coastline, river, and stream banks
- Floods
- Storms
- Subsidence
- Wave action
- Wood-borers
- Volcanoes

Man-made Threats:
- Anchoring—particularly of freighters
- Federal projects—dredging, naval base development, dam and reservoir construction, channelization, etc.
- Looting
- Lack of maintenance (maritime resources)
- Neglect
- Non-conservation of materials recovered from underwater
- Oil/Gas/Mineral extraction
- Pipelines
- Pollution
- Salvaging/Treasure hunting
- Shellfishing
- Shore facility expansion—ports, marinas, recreation areas, airports
- Sport diving
- Vandalism

[a]Not listed in priority order.

SOURCE: Office of Technology Assessment, 1987.

Even though many treasure salvors cannot afford the kinds of sophisticated and powerful remote sensing locational techniques developed for the space program and the oil, gas, and mineral industries, a few have acquired other marine technologies and, in recent years, gained access to many significant sites. Table 7 lists a few significant historic shipwrecks that have been exploited for treasure. Shipwrecks are attracting the interest of increasing numbers of groups and individuals able to invest in underwater exploration. One of the most dramatic examples involves the *R.M.S. Titanic*, which is located 2½ miles below the surface in international waters, about 350 miles southwest of Newfoundland. An American oil company executive and a Hollywood broadcasting group, among others, are collaborating with scientists from the Institute for Research and Exploitation of the Sea, an agency of the French government, to retrieve artifacts and open three safes from the wreck. The project, which will involve spending at least $3 million, will consist of a series of 10 dives by miniature submarine, and broadcasts of the event live from the seafloor. The project's expedition team has used a three-man mini-sub to retrieve a leather, "doctor's-style valise" filled with jewels, bank notes and other valuables, and a safe which is believed to have be-

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[60] Daniel J. Lenihan, National Park Service, personal communication, March 1987.

[61] Statement of Marcia Myers, Vice President for Maritime Preservation, National Trust for Historic Preservation, before the Subcommittee on National Parks and Public Lands of the House Committee on Interior and Insular Affairs, on H.R. 1044, a bill to establish the National Maritime Museum at San Francisco, March 26, 1987.

Table 7.—Representative Historic Shipwrecks Exploited for Treasure

- *Espiritu Santo*: One of the 1554 New Spain fleet wrecks located off Padre Island, Texas;
- *Nuestra Senora de Atocha*: A 16th century Spanish galleon off the Florida Keys;
- *Whydah*: An 18th century English pirate ship off the coast of Massachusetts;
- *H.M.S. DeBraak*: An 18th century Dutch-built English privateer off Lewes, Delaware;
- *Nuestra Senora de la Maravilla*: a large 16th century Spanish galleon 50 miles north of Grand Bahama Island.

SOURCE: Office of Technology Assessment, 1987.

longed in the ship's assistant pursor's office.[62] The recovery venture began in the summer of 1987, with completion scheduled for September 10.

Recovery of items from the *R.M.S. Titanic* is being protested by many who believe that the site should remain untouched as a memorial to those who perished in the ship's sinking.[63] Others argue that items from the *Titanic* possess historical value precisely because they come from the shipwreck and that salvage operations should continue on the basis that international law provides for the salvage of vessels lost at sea.[64]

Some treasure salvors employ archaeologists to oversee or carry out tasks that can minimize damage to sites. Many archaeologists, however, believe that the basic goals and interests of archaeological research and treasure salvaging are inherently antithetical, and that when profit is the motive for exploitation of shipwrecks, scientific research and the shipwrecks themselves must inevitably suffer. Particularly when excavation of a wreck requires the application of expensive technology, or the salvor is operating on a speculative financial shoestring, as many do, it is likely that the recovery of objects having financial value will take priority over the recovery and conservation of material that may be priceless to archaeological research but of little or no commercial value.[65]

Treasure salvors who have become aware of the importance of historical research, may contract for the study of historical documents such as those found within two particularly rich archives—El Archivo General de Indias in Seville, Spain, and El Archivo General de la Nacion in Mexico City, Mexico. These archives, which are highly valued for a broad range of historical research, contain thousands of records from the 16th through the 19th centuries on all aspects of exploration, seafaring, and trade sponsored by the Spanish crown in the New World. Much of this documentation provides detailed information on the passengers and cargos carried by the ships that traveled back and forth between Europe and the Americas, as well as on disasters at sea.[66]

ISSUE D: There is a critical need for a Federally sponsored facility for underwater archaeology and maritime preservation.

Most participants in the OTA study urged the formation of a federally funded institution devoted to providing:

- accurate information on current preservation technologies for the research, location, analysis, and management of prehistoric and historic structures, objects, and sites;
- information on technologies developed in other fields for possible application to preservation, namely—technology transfer;
- training in preservation technologies;
- ongoing research;
- conservation laboratories;
- interdisciplinary teams capable of intervening on an emergency basis in response to particular technical preservation problems;
- a clearinghouse for preservation project information (Federal, State, local, private) to expedite coordination; and
- the leading technical preservation database.

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[62] Ken Ringle, "Breathtaking Collection of Jewels Discovered at Titanic Site," *Washington Post*, Friday, August 21, 1987.

[63] "Television Special From Titanic Is Planned," *New York Times*, February 1987.

[64] See, for example, William F. Buckley, Jr., "Let Them Sell the Titanic's 'Treasure,'" *Washington Post*, August 17, 1987, p. A19.

[65] Thomas F. King, Advisory Council on Historic Preservation, personal communication, 1987.

[66] Stanley Hordes, Historical Consultant, personal communication, 1986. See also "Translated Documents Capture Ambience and Aroma of the Nina," *The New York Times*, Oct. 14, 1986.

OFFICE OF THE MAYOR

THOMAS L. HAZOURI
MAYOR

JACKSONVILLE, FLORIDA
32202

September 3, 1987

The Honorable Charles E. Bennett
House of Representatives
2107 Rayburn Building
Washington, DC 20515

Dear Congressman Bennett:

Thank you for your recent and very informative letter describing the background and current status of the legislation (H.R. 1983) which would create the Timucuan Ecological and Historic Preserve. It is obvious that the territory involved possesses unique natural and historic qualities that should be protected and accessible to the increasing number of citizens of Jacksonville and the surrounding areas. I am firmly committed to pledging my support to the aforementioned legislation.

Your interest in protecting the City's pristine areas of exquisite natural beauty and ecological value and its historic resources is greatly appreciated. If I can be of any further assistance to you in regard to this matter, please do hesitate to contact me at your convenience.

With all best wishes and warmest regards, I remain

Sincerely yours,

Tommy

THOMAS L. HAZOURI

TLH/rnl

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

August 12, 1987

The Honorable Charles E. Bennett
Congressman
107 Rayburn Building
Washington, D.C. 20515

Dear Congressman Bennett:

Thank you for forwarding on to me a copy of H.R. 1983, as well as the Committee report on this legislation. You can be assured of my complete support for this significant proposal to safeguard some of Florida's most important historical and ecological values.

Moreover, I strongly agree with your conclusion that the Conservation and Recreation Lands program represents an excellent vehicle for combining state, federal and local participation in land acquisition efforts. I feel confident that the many fine attributes of this proposal should ensure a priority ranking which is commensurate with its considerable benefit to the citizens of our state. There is little question but that our natural heritage would be vastly enriched if the legislation you are sponsoring results in the preservation of such fragile and unique lands.

Thank you again for taking the time to share this important information with me.

Sincerely,

Bob

Robert A. Butterworth
Attorney General

RAB/ylj

FLORIDA CATHOLIC CONFERENCE
314 BARNETT BANK BUILDING
POST OFFICE BOX 1571
TALLAHASSEE, FLORIDA 32302
PHONE (904) 222-3803
THOMAS A. HORKAN, JR.
EXECUTIVE DIRECTOR

August 25, 1987

Senator Dale Bumpers, Chairman
Senate Public Lands Subcommittee
Room 308, Dirksen Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

We would like to urge your support and approval of Senate Resolution 1387 relating to the Timucuan Ecological and Historic Preserve. The Spanish and Indian heritage of this country has long been overlooked, but incredible discoveries are being made about the early days of this nation, long before the pilgrims landed in Plymouth Rock or Jamestown was founded.

This bill will involve Ft. George Island in Florida, where Father Francisco Pareja was the only minister of the Catholic Church in the entire continental United States, at times during the 1500's. Father Pareja wrote books in the Timucuan Indian language as well as in Spanish.

This legislation involves many very important sites and heritages, both Catholic and non-Catholic. The preservation of them will benefit this entire nation. We urge your support for it.

Yours very truly,

THOMAS A. HORKAN, JR.

TAH:sp
cc: Senator Lawton Chiles
Senator Robert Graham
Rep. Charles E. Bennett

ARCHDIOCESE OF MIAMI • DIOCESE OF ST. AUGUSTINE • DIOCESE OF ST. PETERSBURG • DIOCESE OF ORLANDO
DIOCESE OF PENSACOLA-TALLAHASSEE • DIOCESE OF PALM BEACH • DIOCESE OF VENICE

STATEMENT IN SUPPORT OF H. R. 1983

by William N. Thurston

Supervisor, Historic Sites Survey and Registration

Florida Division of Historical Resources

Sept. 29, 1987

My name is William N. Thurston. I am Supervisor of Historic Sites Survey and Registration with the Florida Division of Historical Resources. I am here on behalf of Mr. George W. Percy, Director of the Division of Historical Resources and State Historic Preservation Officer for the State of Florida, to speak in support of the proposal before the Committee for the preservation of wetlands and historic and prehistoric sites in the St. Johns River Valley in Florida.

Our concern in this matter is with the potential benefits, both direct and indirect, that passage of the bill may have in regard to the preservation of prehistoric and historic cultural resources within the proposed Preserve. Florida has participated in the federal historic preservation program established by the National Historic Preservation Act of 1966 (PL 89-665) since its inception. In addition, we have, through State legislation, steadily expanded the scope of our own historic preservation activities. We feel that the potential benefits of House Bill 1983 go beyond the specific provisions granting authority to the Secretary of the Interior to acquire certain designated properties and providing for integrated administration and interpretation of historic sites and the information derived from them. Passage of the bill would provide formal recognition of the value of the historical resources within the Preserve. This would enhance not only our efforts to preserve these resources, but our endeavor to stimulate public interest and concern for similar sites in other areas of the state as well.

Others have testified or will testify to the ecological value of the wetlands which make up the bulk of the area encompassed in the proposed Preserve and the importance of preserving the wildlife and aquatic habitats it contains. I can say, however, that the wetlands environment has been extremely important to the human experience, both prehistoric and historic, in this area, and has significantly influenced the historical development of Florida since its discovery and settlement by Europeans in the 16th century.

The abundance of small game and aquatic life attracted early prehistoric settlement of the area and supported the development of one of the major aboriginal cultures in North America, known to anthropologists as the St. Johns culture. This in turn evolved into the Timucuan society which occupied the area at the time of European exploration and settlement in the 16th century. For the next three hundred years, the area was contested, sometimes violently, by the European colonial powers, Spain, France, and England; by the rebellious American colonies in the Revolutionary War; and finally, by Union and Confederate forces during the Civil War. In the peaceful periods between these various conflicts, the waterways of the area provided access for the settlement and economic development of northeast Florida.

Growth and development in northeast Florida in the more recent past have made their own contributions to the inventory of historic sites in the region. In the process, however, many of the physical reminders of prehistoric occupation and earlier historical development have been obscured or obliterated. Those that remain are subject to real or potential threat of loss as development pressures continue to expand.

The sites enumerated in section 202 of the bill represent important historic events or developments in the St. Johns River Valley region. Forts Gabriel and San Estaban were used by the Spanish in the 16th century to control access to the St. Johns River and thus protect the "back door" to the main Spanish stronghold at St. Augustine. Fort Dos Hermanas on the northern tip of Little Talbot Island dates from the late 18th century, and formed a part of the Spanish defenses against American expansionist efforts to annex Florida to the United States following our successful bid for independence. The early 18th century British fort on Fort George Island reflects an abortive attempt to include the area in the Georgia colony. The British fort on St. Johns Bluff was erected to protect the Florida colony during the British occupation from 1763 to 1783. The Thomas Creek Battlefield was the site of the major engagement of the

Revolutionary War in Florida, in which American forces attempting to depose the British authorities in Florida were repulsed. The locations of these sites has been generally established, but have not as yet been verified by archaeological evidence.

The site of the 17th century Mission San Juan del Puerto has been verified. Archaeological excavations carried out in 1985 proved this to be one of the major mission sites in Florida, and it was listed in the National Register of Historic Places in March, 1986. The site is in private ownership, but has been set aside for preservation and interpretation as an historic site by the owners.

The Kingsley Plantation is also listed in the National Register of Historic Places. It is owned by the State of Florida and maintained by the Florida Division of Recreation and Parks. This site contains the only intact remnants of the plantation economy on which colonial Florida was based in the late 18th and early 19th centuries.

The Spanish-American War fortification on St. Johns Bluff is an example of military architecture and construction of the period, and reflects the awakening of concern for coastal defense that the war engendered. The site is in private ownership. While it is not presently threatened, it may be in the future.

Important as the physical preservation of significant historic sites may be, its benefits to the general public depend on adequate and appropriate interpretation. We are therefore pleased that section 203 of the bill calls for the interpretation of historic sites to be integrated in the overall administration and interpretation of the Preserve. We feel that this offers the potential for the development of an interpretive center that can provide visitors with a broad understanding of the relationships of individual sites that may be widely separated and date from different periods of history. In addition, centralized interpretation may provide the most appropriate and effective means of presenting information on sites that may be difficut to reach, or which may be too fragile to withstand the impact of extensive visitor traffic.

In conclusion, we feel that passage of this bill will further efforts to preserve the historic resources within the proposed Preserve, as well as the ecological resources of its wetlands environment.

TESTIMONY OF LARRY GERRY, DIRECTOR JACKSONVILLE OFFICE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
BEFORE THE SUBCOMMITTEE ON Public Lands,
National Parks and Forests
REGARDING HR 1983
Sept. 29, 1987

ON BEHALF OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (SJRWMD), I WOULD LIKE TO THANK THE DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF THE BILL BEFORE YOU TODAY. THE SJRWMD IS ONE OF FIVE DISTRICTS WITHIN THE STATE OF FLORIDA WITH THE RESPONSIBILITY OF MANAGING BOTH GROUND AND SURFACE WATER RESOURCES. THE BOUNDARIES OF THE SJRWMD INCLUDE ALL OR PART OF 19 COUNTIES IN NORTHEAST AND CENTRAL FLORIDA.

HR 1983, WHICH AUTHORIZES THE SECRETARY OF THE INTERIOR TO CREATE THE TIMUCUAN PRESERVE, WOULD PROVIDE FOR THE ACQUISITION AND PRESERVATION OF ABOUT 35,000 ACRES OF VALUABLE COASTAL HABITAT. SEVERAL SIGNIFICANT HISTORICAL SITES LIE WITHIN THE PROPOSED PRESERVE, HOWEVER, I WILL RESTRICT MY COMMENTS TODAY TO THE WATER RESOURCE RELATED ASPECTS OF THE BILL, NAMELY, THE VALUABLE WETLANDS AND ASSOCIATED UPLAND AREAS, AND THEIR RELATIONSHIP TO THE ECONOMY AND ECOLOGY OF NORTHEAST FLORIDA.

A SIGNIFICANT PORTION OF THE 35,000 ACRE TRACT IS RELATIVELY PRISTINE, UNDEVELOPED COASTAL SALT MARSH. SALT MARSH SYSTEMS, SUCH AS THESE, ARE VALUABLE BECAUSE (1) THEY PROVIDE CRITICAL

HABITAT FOR COMMERCIALLY IMPORTANT SPECIES OF FISH AND SHELLFISH, (2) THEY REMOVE POLLUTANTS FROM OUR COASTAL WATERS, AND (3) THEY PROVIDE RECREATIONAL AND AESTHETIC ENJOYMENT.

COMMERCIALLY IMPORTANT SPECIES SUCH AS MENHADEN, SHRIMP, BLUE CRABS, AND OYSTERS DEPEND ON COASTAL SALT MARSHES FOR SURVIVAL. OTHER SPECIES HAVING HIGH RECREATIONAL VALUE, SUCH AS CROAKER, SEA TROUT, FLOUNDER, AND RED DRUM, ALSO DEPEND ON THESE SALT MARSH SYSTEMS. THE VAST MAJORITY OF THE TOTAL DOCKSIDE DOLLAR VALUE OF FISHERIES IN NASSAU AND DUVAL COUNTIES IS COMPRISED OF SPECIES THAT ARE DEPENDENT ON THE TYPES OF HABITAT PROPOSED FOR PROTECTION IN THIS BILL.

THE ABILITY OF WETLANDS TO ENHANCE WATER QUALITY BY REDUCING THE POLLUTANT LOAD OF THE WATER COLUMN HAS INDIRECT ECONOMIC VALUE. NUMEROUS SCIENTIFIC STUDIES HAVE SHOWN THAT FRESHWATER AND SALTWATER WETLANDS CAN REDUCE WATER COLUMN CONCENTRATIONS OF POLLUTANTS INCLUDING NUTRIENTS SUCH AS PHOSPHORUS AND NITROGEN, HEAVY METALS, MAN-MADE ORGANIC CHEMICALS, SUCH AS PESTICIDES, AND PETROLEUM HYDROCARBONS. THE JACKSONVILLE AREA IS GROWING RAPIDLY AND WITH THIS GROWTH WE CAN EXPECT AN INCREASE IN POLLUTANT LOADING TO THE ESTUARIES. THE PRESERVATION OF THESE WETLANDS WITHIN THE PROPOSED TIMUCUAN PRESERVE WILL HELP MITIGATE THE ADVERSE IMPACT OF GROWTH ON WATER QUALITY AND, THUS, WILL HELP MAINTAIN FISH AND SHELLFISH PRODUCTION.

THE SALT MARSH VALUE WHICH IS MOST DIFFICULT TO QUANTIFY IS THE CONTRIBUTION TO THE QUALITY OF LIFE THROUGH RECREATIONAL AND AESTHETIC ENJOYMENT. AS AN INDICATION OF THE ENORMOUS

PSYCHOLOGICAL VALUE OF ONE RECREATIONAL ACTIVITY, SPORT FISHING, CONSIDER THAT 243 MILLION ANGLER DAYS WERE SPENT IN SALT WATER FISHING IN THE UNITED STATES IN 1975 (PETERS, AHRENHOLZ AND RICE, 1978). OTHER RECREATIONAL PURSUITS INCLUDE HUNTING, BOATING, BIRD-WATCHING, AND VARIOUS ARTISTIC ENDEAVORS. ALTHOUGH THE VALUES OF SUCH ACTIVITIES CANNOT BE ACCURATELY QUANTIFIED THEY SHOULD NOT BE CONSIDERED INSIGNIFICANT. IN FACT, BECAUSE OF THE RELATIVELY PRISTINE CONDITION OF MUCH OF THE ACREAGE INCLUDED IN THE PROPOSED TIMUCUAN PRESERVE AND BECAUSE OF THE INCREASING RARITY OF THIS KIND OF HABITAT, THE RECREATIONAL AND AESTHETIC VALUE OF THE PRESERVE MAY EVENTUALLY BECOME ITS GREATEST CONTRIBUTION TO THE CITIZENS OF NORTHEAST FLORIDA.

I WORK IN THE PERMITTING DEPARTMENT OF THE WATER MANAGEMENT DISTRICT AND I AM FAMILIAR WITH THE WATER AND WETLAND RELATED REGULATORY PROGRAMS OF THE OTHER STATE AND FEDERAL AGENCIES. ALTHOUGH AT LEAST THREE AGENCIES (TWO STATE, ONE FEDERAL) PROTECT COASTAL SALT MARSHES, THEIR PROTECTION IS NOT GUARANTEED. THE EFFECT OF STRONG WETLAND PROTECTION LEGISLATION HAS BEEN THE ELIMINATION OF WHOLESALE WETLAND DESTRUCTION, HOWEVER, A SLOW DEGRADATION CONTINUES TO OCCUR AS A RESULT OF MANY SMALL REGULATORY DECISIONS, EACH OF WHICH CONSIDERED ALONE CAUSES INSIGNIFICANT HARM, E.G., JUST ONE DOCK, JUST ONE LAUNCH RAMP, JUST ONE SEPTIC TANK, JUST A LITTLE FILL. THE LONG-TERM CUMULATIVE EFFECT OF THESE DECISIONS, HOWEVER, IS SIGNIFICANT. ALTHOUGH STATE AND FEDERAL WETLAND REGULATIONS HAVE HAD A VERY POSITIVE EFFECT ON THE RATE OF HABITAT DEGRADATION, OUR NATURAL

SYSTEMS STILL SUFFER FROM WHAT DR. WILLIAM ODUM, OF THE UNIVERSITY OF VIRGINIA, CALLS THE "TYRANNY OF SMALL DECISIONS". ACQUISITION OF THE SALT MARSHES AS PROPOSED IN THIS BILL ALONG WITH SOME ADJACENT UPLANDS, WOULD ELIMINATE THIS SLOW DEGRADATION OF ONE OF THE MOST OUTSTANDING NATURAL RESOURCES IN NORTHEAST FLOIRDA.

THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT SUPPORTS THE ACQUISITION OF WETLANDS AND CERTAIN ADJACENT UPLAND AREAS PROPOSED IN H.R. 1983 BECAUSE WE CONSIDER THIS TO BE THE MOST EFFECTIVE MECHANISM FOR THE LONG-TERM PROTECTION OF THESE VALUABLE COASTAL SYSTEMS.

UNIVERSITY OF NORTH FLORIDA
4567 ST. JOHNS BLUFF ROAD S. JACKSONVILLE, FLORIDA 32216

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF NATURAL SCIENCES
904-646-2830

Testimony in support of H.R. 1983

Mr. Chairman:

My name is Carole DeMort. I am Chair of the Department of Natural Sciences at the University of North Florida. I have a Ph.D. in Marine Biology from Oregon State University. I have been studying the estuarine ecology of the St. Johns River for fourteen years and have presented invited papers to numerous conferences, and scientific societies, including the American Institute of Biological Sciences and the Florida Academy of Sciences. I have published articles in refereed journals and worked as an environmental consultant for federal, state, county, and private agencies. I am giving this testimony in strong support of H.R. 1983, a bill that would set aside approximately 35,000 acres of the lower, northeast section of the St. Johns River Valley for the preservation of the wetlands and historic sites within this designated area.

I consider myself a wetlands ecologist and would like to address this aspect of the bill. I have worked extensively in the area described by this bill and was involved in the original Ft. George Island Carrying Capacity Study completed by the Jacksonville Planning Board in the mid 1970's. I have studied both the wetlands and the adjacent upland forests in the Ft. George Island area. The wetlands adjacent to Ft. George Island contain some of the richest saltmarsh still remaining in the lower St. Johns River Valley. Much of the specific wetlands contained within the bill are nursery areas for both White and Brown Shrimp. This is also a prime nursery area for flounder, tarpon, spotted sea trout, and jack crevalle.

The saltmarsh system in this area consists primarily of Spartina or Smooth Cordgrass. Spartina marshes are the most productive types of saltmarshes. In general, Spartina saltmarsh is much more productive than freshwater marshlands. Much of the original Spartina marsh system of Northeast Florida has been drained or filled and lost as habitat for fish and waterfowl. The wetlands included within this bill support winter waterfowl feeding grounds for migratory species, provide a food supply for resident waterfowl populations that nest in adjacent upland forests, and provide nursery grounds for shrimp, blue crab, and a wide variety of economically important finfish.

Those of us who have been studying wetlands over an extended period of time and who have looked at the decline in shrimp populations in North Florida feel that this decline is due primarily to habitat loss and degradation. Preserving 35,000 acreas will not reverse the population declines we have been observing in both finfish and shellfish species. However, I feel it would be a major step in the direction that we must take if we are really trying to preserve the qualitiy of the environment that we have left! We can't pretend to be interested in wildlife or waterfowl management if we continue to lose valuable breeding and nursery habitat. This bill would save a small portion of top quality nursery habitat and the vital adjacent uplands.

Sincerely,

Carole Lyle DeMort

Carole Lyle DeMort
Chairperson, Dept. of Natural Sciences
University of North Florida
Jacksonville, Florida 32216
6/15/87

The Lower St. Johns River: An Ecological Evaluation.

Dr. Carole L. DeMort
Department of Natural Sciences
University of North Florida
Jacksonville, Fl. 32216

The St. Johns River is somewhat unique among American rivers in that it is a "black water" river with a shallow euphotic zone but relatively high productivity. The submergent vegetation varies from *Ulva* and *Enteromorpha* near the mouth to *Eichornia*, *Typhus*, *Pontederia*, *Myriophyllum*, and *Vallisneria* in the freshwater regions just south of Jacksonville. Due to the high turbidity of the lower St. Johns, submergent vegetation is limited to the shallow waters adjacent to the shoreline. Extensive salt marshes exist in northeastern Duval County along the northern boundary of the St. Johns drainage and along the Intercoastal Waterway. The marshes that drain into the St. Johns are characterized by extensive areas of *Juncus* marsh and smaller areas of medium and short *Spartina* marsh.

The lower St. Johns provides spawning and nursery habitat for a large number of economically important fish species. The following commercial or sports fishes either spawn in or live in the St. Johns during part of their life cycles: lady fish, tarpon, threadfin herring, atlantic menhaden, striped mullet, white mullet, spadefish, pinfish, spotted sea trout, weakfish, red drum, black drum, croaker, spot, northern kingfish, jack crevalle, florida pompano, pigfish grunt, summer flounder, bluefish, butterfish, and king mackeral. Table 1 lists the fish species that have been collected by UNF marine science students in the lower St. Johns from 1980-1985. Table 2 lists the species composition of fish larvae identified from Sisters Creek for three summer collecting periods. This list represents total number of larvae collected from semi-monthly plankton tows from May through August at the mouth of Sisters Creek.

There appears to be a trend toward decreased numbers of fish larvae. This downward trend has also been observed in the numbers of juvenile fish collected in seines at varipus locations along the lower St. Johns from Sisters Creek to Lake George. Species that seem to be decreasing the most in terms of juveniles collected are tarpon, spotted sea trout, red drum, black drum, and king mackeral. Mullet, spot, and croaker do not seem to be decreasing.

Blue crabs are abundant in the St. Johns. I have heard complaints from crabbers that their catches are down, especially in terms of the larger specimens. This may be the effect of fishing intensity rather than lowered total population densities. Their appears to be a shift in prime juvenile blue crab areas, with an increase in juvenile populations in the shallow waters adjacent to the Buckman Bridge (I295).

The populations of commercial size white and brown shrimp are decreasing. The population densities, as with most marine invertebrates, fluctuate widely from year to year; but plotted over several years there is a downward trend in catch per unit effort. This seems to be due to a decrease in suitable nursery areas for the postlarval and juvenile shrimp within the St. Johns river system. We have not detected significant decreases in the numbers of postlarvae collected in plankton tows at the mouth of the St. Johns. This indicates that approximately the same number of postlarvae are entering nursery areas but fewer are migrating out as subadults, probably due to the effects of increased competition.

Recommendations

We need to stop the destruction of salt marshes, freshwater wetlands along the tributaries, and eelgrass beds. I have been studying the lower St. Johns River since 1972. During those fourteen years, I have seen the eelgrass beds along the river decline significantly, large areas of tributary wetlands degraded by landfills that were allowed too close to adjacent wetlands, construction that was permitted adjacent to freshwater wetlands or salt marshes either without effective setback lines or without adequate enforcement of permit requirements. We have the laws on the books to halt the further degradation of these wetlands. We need to enforce them and to effectively monitor existing construction permits.

Maintenance dredging will continue to present a problem in terms of its effects on fisheries resources. I realize that periodic dredging is necessary to maintain the channels and dock areas. However, dredging causes re-entrainment of toxins that have been sequestered in the sediments. This re-entrainment is potentially fatal to larval and juvenile stages of fish and shellfish that may be in the area at the time of dredging. Even if fatalities do not occur, the toxins can affect developmental sequences, lower disease resistance, or reduce growth rates. Many of the toxins sequestered in the bottom sediments of the St. Johns and its tributaries in the Jacksonville area are mutagenic or teratogenic. These include PCB's, hydrocarbons, heavy metals, and pesticides. Maintenance dredging would have the least harmful effects on fisheries resources if it were carried out during the "off season" in terms of spawning and nursery utilization of the river system. Do it when the larvae and juveniles aren't in the dredged area. Such biological factors do not seem to be considered when dredging contracts are negotiated.

The lower St. Johns River area is feeling the impact of increased development, both industrial and residential. Point and non-point source pollution is a serious problem for the river system. There are too few regional sewage treatment plants to serve the growing populations of the area. Too many areas have poorly maintained or inadequate private systems or no systems at all. The solution to this problem is simple--more regional sewage treatment facilities must be constructed. Achieving this goal, given the present economic environment, is impossible in the near future. Failing this, we need to curtail development in areas whose treatment facilities are overloaded or inadequate. Moratoriums must be established and enforced until acceptable effluent standards can be met.

The St. Johns River is capable of flushing many of the pollutants from its system. As it exists today, it is a much healthier river than most of the urban rivers in the United States. The estuary is highly productive, bordered by some of the most extensive salt marshes on the east coast of Florida. This productivity needs to be maintained and further degradation of the estuary and adjacent salt marsh prevented by giving the Northeast Florida region the manpower necessary to enforce the environmental laws that protect this resource.

Table 1. Species list of fish collected from the lower St. Johns River

Alosa pseudoharengus - Alewife
Anchoa hepsetus - Striped anchovy
Anchoa mitchilli - Bay anchovy
Brevoortia tyrannus - Atlantic menhaden
Caranx hippos - Jack crevalle
Chaetodipterus fiber - Atlantic spadefish
Chilomycterus schoepfi - Striped burrfish
Cynoscion nebulosus - Spotted seatrout
Cynoscion regalis - Weakfish
Cyprinodon variegatus - Sheephead minnow
Dorosoma cepedianum - Gizzard shad
Elops saurus - Ladyfish
Eucinostomus argenteus - Spot
Fundulus cingulatus - Banded topminnow
Fundulus confluentus - Marsh killie
Fundulus grandis - Gulf killie
Fundulus heteroclitus - Mummichog
Fundulus majalis - Striped killie
Fundulus similis - Longnose killie
Gobionellus spp - Goby
Gobiosoma spp - Goby
Haerulon parri - Sailor's choice
Hypsoblennius hentz - Carolina blenny
Lagodon rhomboides - Pinfish
Leiostomus xanthurus - Spot
Megalops atlantica - Tarpon
Menidia beryllina - Silversides
Menticirrhus saxatilis - Northern kingfish
Micropogon undulatus - Atlantic croaker
Mugil cephalus - Striped mullet
Mugil curema - White mullet
Opisthonema oglinum - Threadfin herring
Opsanus tau - Toadfish
Orthopristis chrysoptera - Pigfish
Paralichthys dentalus - Summer flounder
Paralichthys lethostigma - Southern flounder
Pogonias cromis - Black drum
Pomatomus saltatrix - Bluefish
Prionotus tribulus - Bighead searobin
Poronotus triacanthus - Butterfish
Scianenops ocellata - Red drum
Scomberomorus cavalla - King mackeral
Selene vomer - Lookdown
Sphaeroides maculatus - Northern puffer
Strongylura marina - Atlantic needlefish
Symphurus plagiusa - Blackcheek tongue fish
Syngathus floridae - Florida pipefish
Synodus foetens - Inshore lizardfish
Trachinotus carolinus - Florida pompano
Trichuirus lepturus _ Atlantic cutlassfish
Trinectes maculatus - Hogchoker

Table 2. Species Composition of Fish Larvae identified from mid-flood Plankton Collections during Summer 1979, 1980 and 1985 at Sister's Creek

	1979	1980	1985
Anchoa	28	21	8
Menidia	16	10	10
Fundulus	39	26	12
Anguilla	6	12	14
Gobiosoma	4	8	7
Pleuronectidae	6	--	1
Brevoortia	2	1	1
Syngnathus	1	1	--
Sciaenidae	6	3	2
Clupeidae	--	10	5
Unidentified	12	18	12
Total	120	110	72

[illegible]

[illegible] SUBCOMMITTEE ON Public Lands, National Parks and Forests

Dear Chairman Bumpers and Committee Members:

I am Manley Fuller, Executive Vice President of the Florida Wildlife Federation. The Florida Wildlife Federation is one of Florida's largest private conservation education organizations. We are the state affiliate of the National Wildlife Federation, the nation's largest private conservation education organization. Our organization is concerned about the conservation of Florida's natural resources. Among the most critically endangered habitats in Florida are coastal islands and wetlands. HR1983 proposed by Congressman Charles Bennett would establish the Timucuan national preserve in northeastern coastal Florida. The Federation strongly supports their proposed legislation.

The area encompassed by the proposed legislation includes a number of pre-Columbian archealogical sites. The wildlife values of the Timucuan proposal are significant. The preserve provides feeding areas for the Federally endangered wood stork and a host of other rare and endangered animals (see appendix). The Federally threatened indigo snake occurs on the area's uplands. Rare flora occur within the area. Significant recreational use of the area including fishing, camping, boating and hunting occur.

The proposed federal preserve would provide a strengthening of protection for the area's wetlands. Federal wetlands criteria are stronger and more encompassing than state programs. Florida's wetlands are being destroyed at a rapid rate and these coastal wetlands are valuable fish and wildlife habitats. Because of the area's significant historic, recreational, fish, wildlife and environmental values the Florida Wildlife Federation strongly endorses Congressman Bennett's proposed legislation. We support the proposal as written, but would also favor expansions to include Black Hammock Island and also the Nassau county portions of the Nassau river shoreline within the preserve.

I appreciate this opportunity to address the subcommittee and hope that you choose to support this legislation.

Table V

SPECIES OF THE NASSAU RIVER-ST. JOHNS RIVER MARSH AND FT. CLINCH STATE PARK AQUATIC PRESERVE WHICH ARE CLASSIFIED AS ENDANGERED, THREATENED, OR OF SPECIAL CONCERN

ENDANGERED

Reptiles

Atlantic Ridley turtle	(*Lepidochelys kempii*)

Birds

Wood stork	(*Mycteria americana*)
Arctic peregrine falcon	(*Falco peregrinus tundrius*)

Mammals

West Indian manatee	(*Trichechus manatus latirostris*)
Right whale	(*Balaena glacialis*)

THREATENED

Reptiles

Atlantic loggerhead turtle	(*Caretta caretta caretta*)

Birds

Eastern brown pelican	(*Pelecanus occidentalis carolinensis*)
Least tern	(*Sterna antillarum*)
Bald eagle	(*Haliaeetus leucocephalus*)

[illegible]

[illegible] Florida Natural Areas Inventory [illegible] Florida. [illegible]

SPECIES OF THE NASSAU RIVER-ST. JOHNS RIVER MARSH AND FT. CLINCH STATE PARK AQUATIC PRESERVE WHICH ARE CLASSIFIED AS ENDANGERED, THREATENED, OR OF SPECIAL CONCERN
(continued)

SPECIES OF SPECIAL CONCERN

Birds

American oystercatcher	(*Haematopus palliatus*)
Little blue heron	(*Florida caerulea*)
Reddish egret	(*Dicnromanassa rufescens*)
Snowy egret	(*Egretta thula*)
Tricolored or Louisiana heron	(*Egretta tricolor*)

Fish

Atlantic sturgeon	(*Acipenser oxyrhynchus*)

Reptiles

American alligator	(*Alligator mississippiensis*)

- Florida Game and Fresh Water Fish Commission. *Rare and Endangered Biota of Florida*. P.C.H. Pritchard, Series Ed., Vol. 1-6. *University Presses of Florida*, Gainesville, 1978.
- Florida Game and Fresh Water Fish Commission. *Endangered and Potentially Endangered Fauna and Flora in Florida*. October, 1984.
- Florida Natural Areas Inventory. Tallahassee, Florida. 1984.

FLORIDA WILDLIFE FEDERATION
Affiliated With National Wildlife Federation

STREET ADDRESS: 2545 BLAIRSTONE PINES DRIVE
MAILING ADDRESS: P.O. BOX 6870, TALLAHASSEE, FLORIDA 32314-6870
PHONE: 904-656-7113

MANLEY K. FULLER, III
Executive Vice President

May 29, 1987

Hr 1977

Charles E. Bennett
U. S. Congressman
314 Palmetto Street
Jacksonville, FL 32202

Dear Congressman Bennett:

The Florida Wildlife Federation strongly supports House Bill 1983 to establish the Timucuan Preserve on Fort George Island. The area has outstanding fish and wildlife values, contains rare biotic communities, and offers a valuable area for public recreation including boating, fishing, hunting, swimming and nature study. As you know, the island faces tremendous development pressures and we believe that the island should be publicly acquired and managed as you propose. We think this bill is an excellent legislative proposal and you should be commended for introducing this legislation. We are sending letters to members of the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources in support of HR 1983.

Sincerely,

Manley K. Fuller, III
Manley K. Fuller, III
Executive Vice President

MKF/bke

cc: Mr. Richard Tillis
Mr. Steve O'Hara
Mr. Dennis Bayer
Dr. Larry Harris
Mr. Kim Stanberry
Mr. Jack Stanley
Mr. Jerry Schatz
Ms. Sarah Bailey
Mr. Tim Keyser
Ms. Judy Hancock
Mr. Larry Thompson
Mr. Bernie Yokel
Mr. George Willson
Senator Lawton Chiles
Senator Bob Graham
Florida Congressional Delegation
Mr. Charlie Shaw
Dr. Rudy Rosen
Mr. David White
Ms. Sharon Newsome
Mr. Scott Feirebend

The Florida State University
Tallahassee, Florida 32306-2043

Department of Biological Science

July 29, 1987

M + Fel
N.J. 0537

Hon. Lawton Chiles and Hon. Robert Graham
Congress of the United States
Senate
Washington, DC 20515

Gentlemen:

I was very pleased to learn that you are co-sponsors of legislation to include Fort George Island in a federally designated wetlands preserve. Beginning in 1983, I have been asked several times by the Florida Department of Community Affairs and the Northeast Florida Regional Planning Council to examine and comment on various of Fairfield-Fort George's plans for development of this island and more generally to consider the biota of the island: what aspects are unique, what threats exist, and what would be appropriate uses of Fort George. My most recent testimony on these points was at a hearing in Tallahassee before the director of the Department of Community Affairs.

In brief, the biotic community of Fort George is unique in north Florida. The vegetation is typical of sites hundreds of miles to the south. There are numerous plants and several animals of special interest, including some that have or should have threatened status. Because the island is so small, and already has sustained some development, the biotic community would be gravely threatened by any substantial development, certainly by development on the scale envisioned in Fairfield's proposals. In particular, the Rollins Sanctuary, an unusual and valuable forest preserve on the island, would certainly be changed by influx of exotic seeds if development were to proceed. The same problems would beset a number of other smaller sites. Furthermore, I am convinced that the hydrological regime that currently supports the forests would be irretrievably damaged were there to be major modification.

For these reasons, I believe Fort George Island is not only suited for designation as a wetlands preserve but that such a designation (or at least some other status mandating minimal further development) is the only means of saving this biological resource. Therefore I strongly support your proposal. It is heartening to find support for such worthy environmental goals among Florida's congressional delegation.

Sincerely yours,

Daniel Simberloff
Robert O. Lawton Distinguished Professor

DS:cgg

cc: Hon. Dale Bumpers
Hon. Charles E. Bennett

FRIENDS OF FORT GEORGE ISLAND, INC.
Post Office Box 371
Jacksonville, Florida 32201
Telephone: (904) 389-1383

Sept, 29, 1987

TO: - Subcommittee on Public Lands

I am pleased to have the opportunity to testify before the House Interior Subcommittee on Public Lands. I am spokesman for and representative of The Friends of Fort George Island, Inc. The Friends purpose is the preservation, conservation and restoration of Fort George Island and surrounding environs. Our members are island residents and interested citizens. Personally, I have owned property on the island for over 40 years and I have a home there. I have been very familiar with Fort George Island for over 60 years.

We are strongly in favor of including all of Fort George Island and the surrounding salt marsh and waters in the "Timucuan Ecological and Historic Preserve" as described in Bill H.R. 1983.

We feel that including all of the island in this preserve will increase the protection which is very necessary to its future.

Fort George Island is approximately 950 acres of uplands bordered by 2,500 acres of tidal salt marshes. Until the late 1800s Fort George Island was a barrier ocean front island. Little Talbot Island crept southward and is a narrow island now located between the ocean and Fort George Island thus making Fort George Island a secondary barrier island with all of the characteristics of a barrier island. (See 1824 map and 1853 chart showing ocean frontage, and an up to date map. All marked Exhibit A.)

The U.S. Department of Interior has recommended that Fort George Island be added to the Talbot Barrier Island complex in the Coastal Barrier Resources System. (Letters attached Exhibit B)

Fort George Island is rich in history with happenings known to begin as much as 1,500 years ago when Indians began living there. Ancient Indian mounds still exist in many areas on the island and almost everywhere you dig a shallow hole artifacts can be found. Attached are two detailed histories of the island. One is written by S. G. W. Benjamin for Atlantic Monthly in 1887 (Exhibit C) and the other is from an unknown source (Exhibit D).

There are wildlife and birds which need protection. The wood stork and the indigo bunting, and gopher tortoise and the indigo snake are a few.

House Interior Subcommittee on Public Lands
Page 2
June 12, 1987

Plant life is important on this heavily forrested island. Orchids and ferns and other rare plants thrive due to favorable micro-climate and oyster shell middens. These also need protection.

Fort George Island is a unique island and holds tremendous amounts of history and incomparable beauty and we feel that all of it should be included in this preserve.

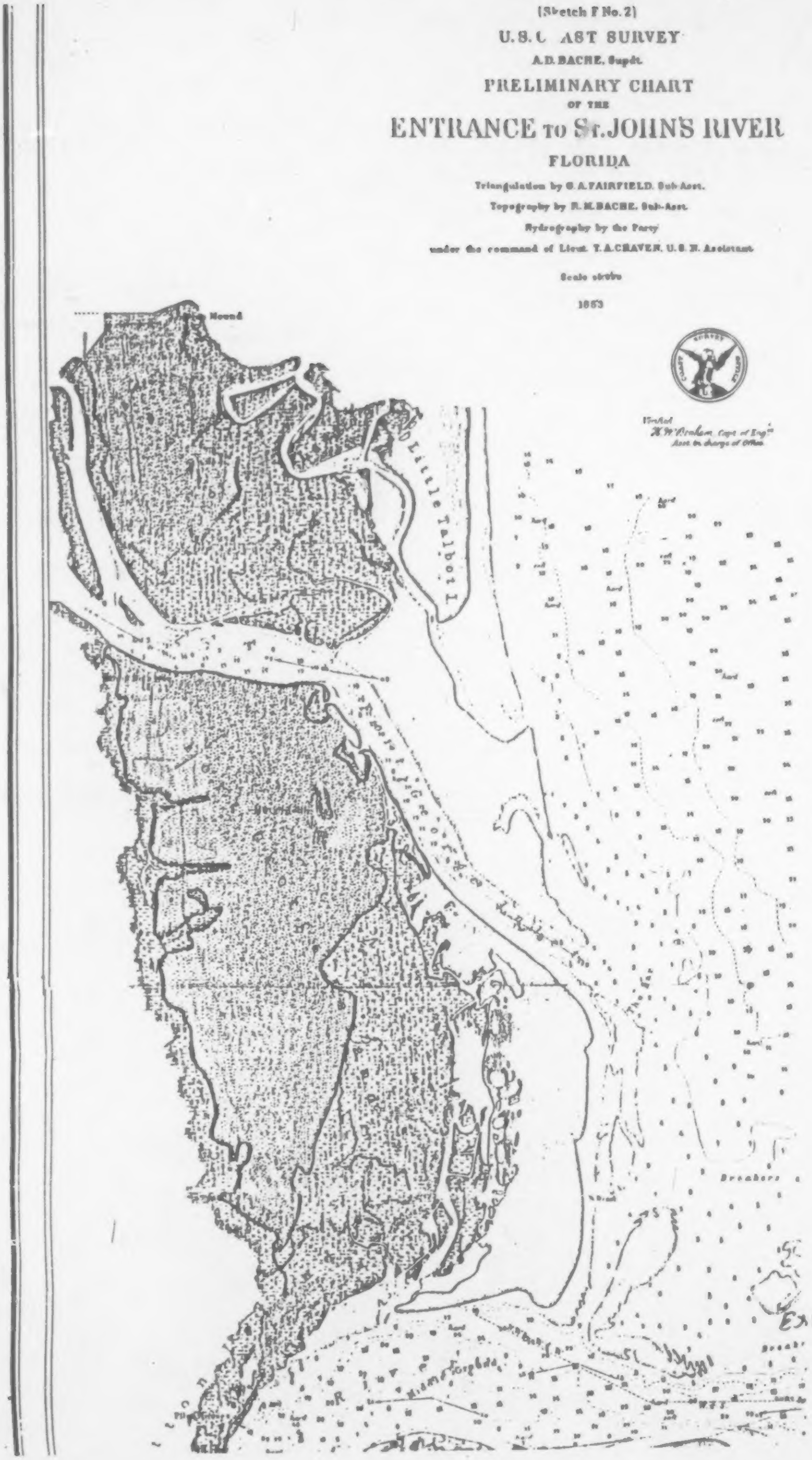
Thank you for your interest.

FRIENDS OF FORT GEORGE ISLAND, INC.

By
William E. Arnold, Jr.
Vice President and Spokesman

Enclosures:

Exhibit A - Maps dated 1824, 1853, 1986
Exhibit B - Barrier Island Letters
Exhibit C - 1887 History
Exhibit D - History



(Sketch F No. 2)

U.S. C AST SURVEY

A.D. BACHE, Supdt.

PRELIMINARY CHART

OF THE

ENTRANCE TO ST. JOHN'S RIVER

FLORIDA

Triangulation by G. A. FAIRFIELD. Sub-Asst.

Topography by R. M. BACHE. Sub-Asst.

Hydrography by the Party

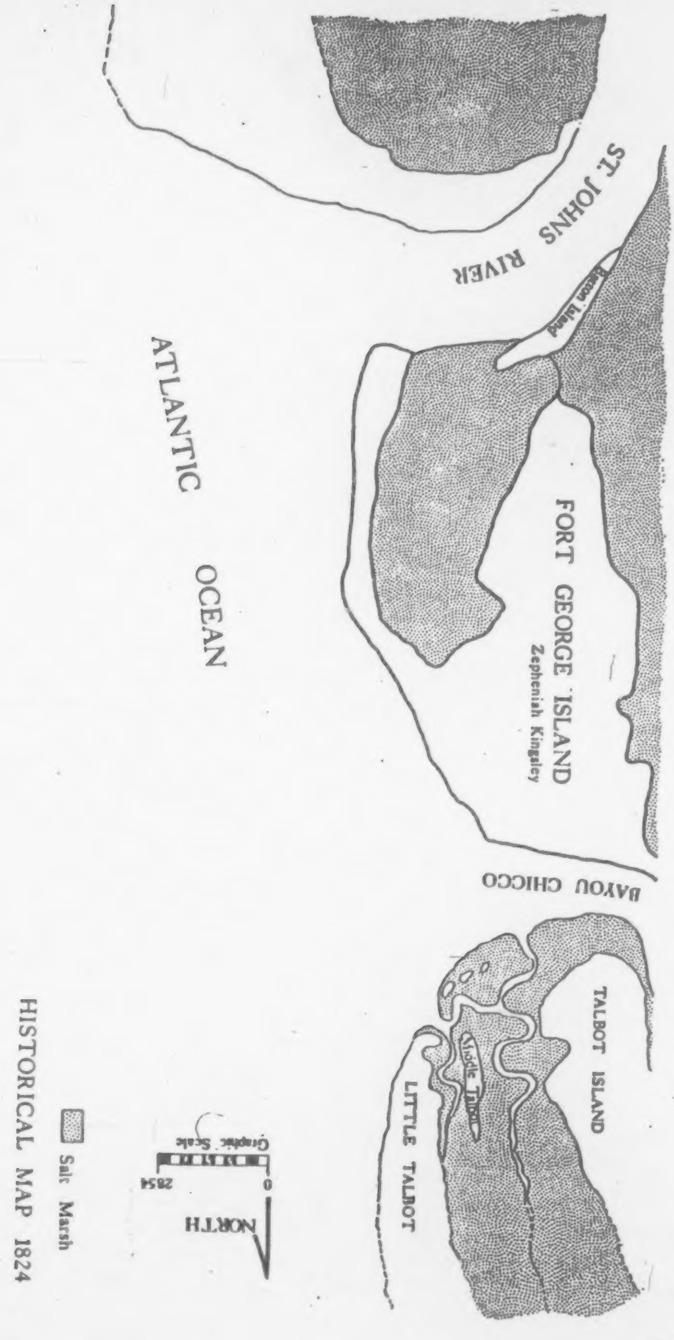
under the command of Lieut. T. A. CRAVEN. U. S. N. Assistant

Scale [illegible]

1853

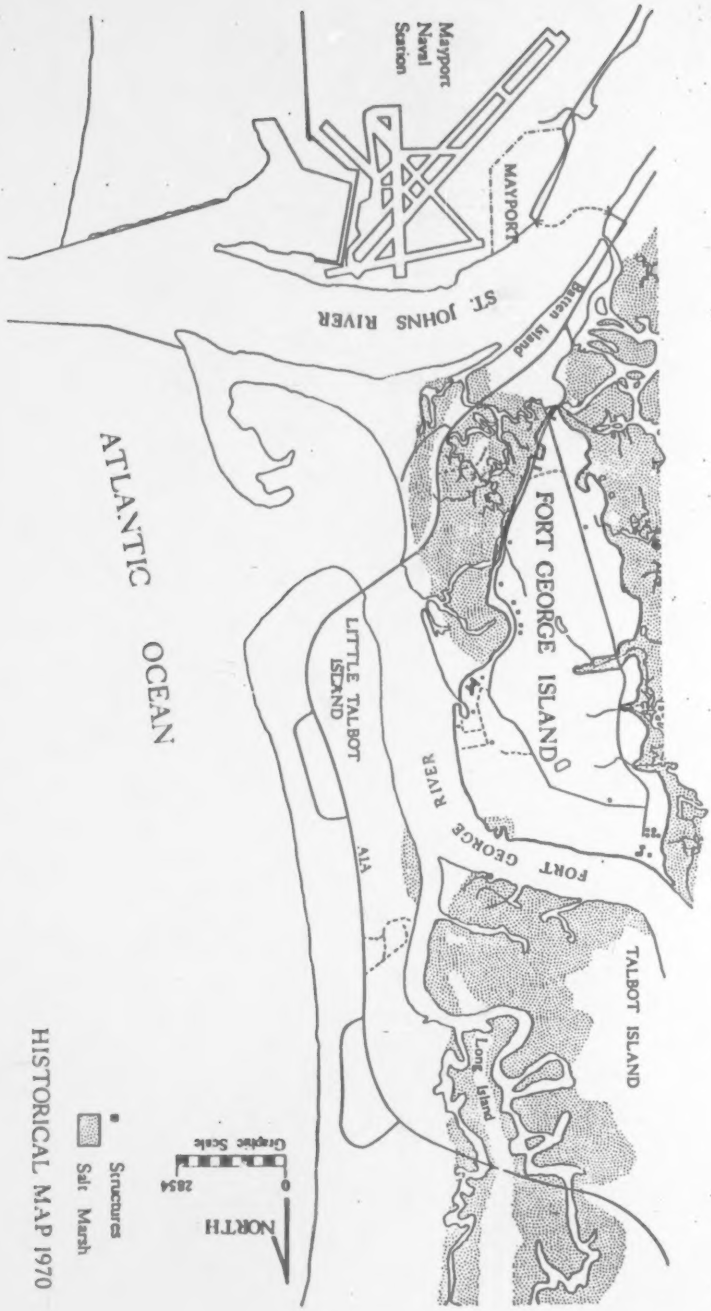
Verified
H. W. Benham Capt of Engrs
Asst in charge of Office

EXHIBIT A


ST. JOHNS RIVER
Batton Island
ATLANTIC OCEAN
FORT GEORGE ISLAND
Zepheniah Kingsley
BAYOU CHICCO
TALBOT ISLAND
Middle Talbot
LITTLE TALBOT
NORTH
0
2854
Graphic Scale
▨ Salt Marsh

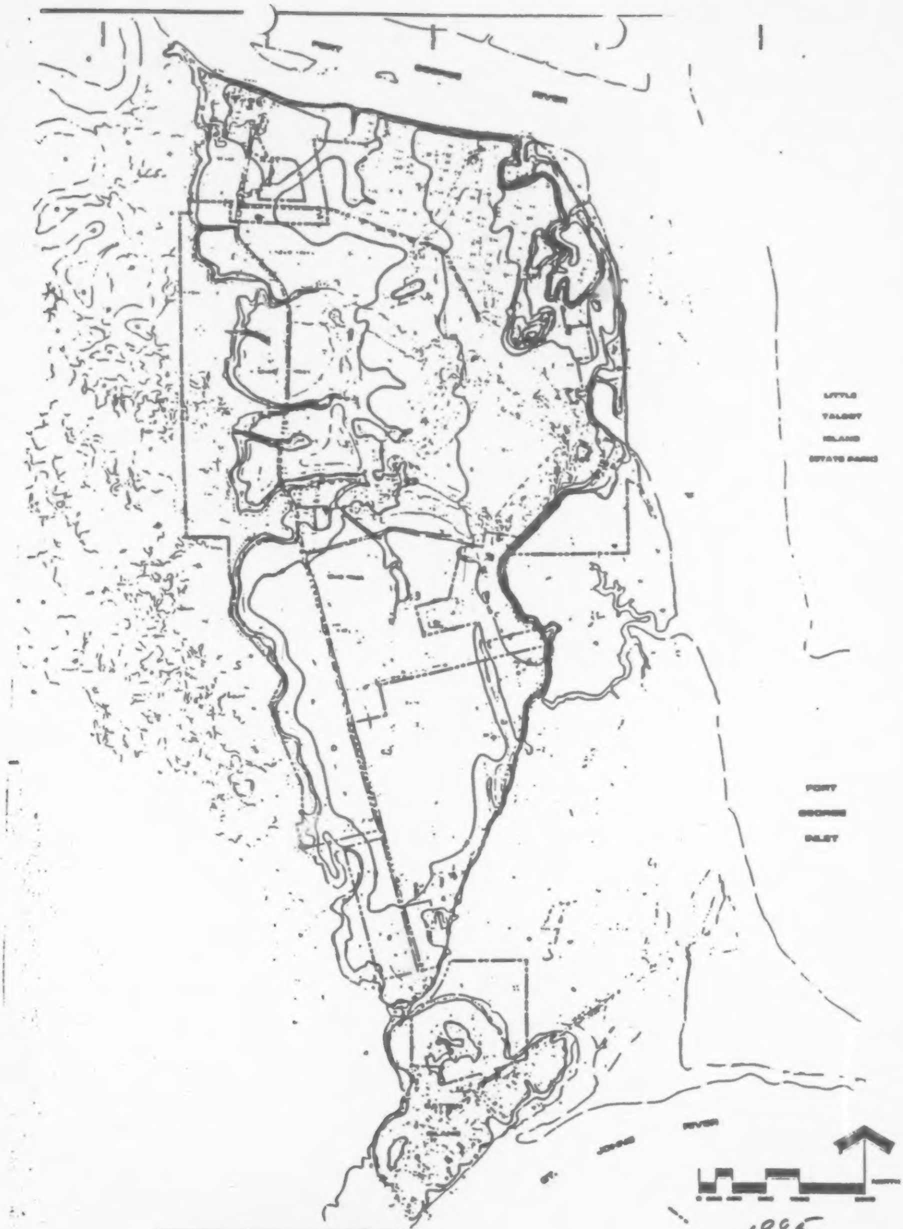
HISTORICAL MAP 1824

EXHIBIT "A"


Mayport Naval Station
MAYPORT
ST. JOHNS RIVER
Batten Island
ATLANTIC OCEAN
FORT GEORGE ISLAND
LITTLE TALBOT ISLAND
FORT GEORGE RIVER
A1A
TALBOT ISLAND
Long Island
Graphic Scale
0
2854
NORTH
Structures
Salt Marsh

HISTORICAL MAP 1970

EXHIBIT "A"


RIVER
LITTLE
TALBOT
ISLAND
(STATE PARK)
FORT
GEORGE
INLET
ST. JOHNS RIVER

1985

Fort George Island
FLORIDA

EXHIBIT "A"

THIS LETTER SENT TO:
GV. MARTINEZ
REPS. BENNETT AND CHAPPELL
SENATORS GRAHAM AND CHILES
and to the Dept. of the Interior,
Wash., D.C.

May 1, 1987

Subject: Proposed Addition of Jacksonville Florida's Fort George Island to the Federal Government's list of Fragile Coastal Areas they consider Ill-suited for Development.

Dear Sir:

We strongly urge you to support the U.S.Government Department of Interior's above Subject Proposal.

Our families have lived in the Fort George area for over one hundred and fifty years. We have personally witnessed the deterioration of nature's shoreline protection afforded by this Barrier Island due to Developer's activities.

Gone are the wild horses, ospreys, eagles, panthers, and small game that inhabited the island, replaced by poisonous run-offs brought in to fertilize, etc.
Even without hurricans or bad N.E. storms, some of the roads are under water at high tides, especially at full moon, demonstrating its value in holding back flood waters.
Again, we hope you will support the Subject Proposal.

Sincerely yours,

Guy W. Sackett, Jr.
Retired Licensed Professional
Engineer and Land Surveyor

Evelyn Sackett Hogan
Retired School Teacher

Guy W. Sackett, Jr.
10110 Heckscher Dr. Box 153
Tel.(904) 251-3269
Ft. George Isle, FL 32226

EXHIBIT "B"

WILLIAM M. BLISS CONSULTANT, INC.
2227 HERSCHEL STREET
JACKSONVILLE, FLORIDA 32204
TELEPHONE (904) 384-4300

William M. Bliss, E.A., M.S.P.A.
Thomas M. Bliss, President
William M. Bliss, Jr., Vice President
Lewis C. Bliss, Marketing

April 28, 1987

U S Representative Charles E. Bennett
2107 Rayburn House Office Building
Washington, D.C. 20515

Dear Charlie:

Recent articles in local papers have mentioned that the U.S. Department of the Interior is recommending that Fort George Island and its salt water marshes be made a part of the Talbot Island Complex in the Coastal Barrier Resources System.

Scrap's family have owned property on Fort George Island for over 60 years and we still own property there. Her grandmother owned a home there for many years, long before the island was accessable by road. To reach it they drove to Mayport, used a rowboat to cross the St. Johns river and a horse-drawn carriage to her house.

The island has remained relatively undeveloped and is rich in wildlife, rare plants and early Florida history. We are opposed to inappropriate over-development and would much prefer that it be added to the Tablot Island Complex in the Coastal Barrier Resources System.

I hope that we can count on your support.

Cordially,

Bill

William M. Bliss
1849 Mallory Street
Jacksonville, Florida 32205

Exhibit "B"

Historic Points at Fort George Island

By S. G. W. BENJAMIN

Taken from

Atlantic Monthly, November 1887

EXHIBIT "C"

Historic Points at Fort George Island

THE charms of Fort George Island, at the mouth of the St. John's River, Florida, are widely and justly celebrated. But the enraptured visitor, lingering under its lithe groves of palm, little dreams of the scenes of romance and blood which half a century before the Pilgrims landed at Plymouth enriched this magical isle with the element of association and legend.

It is with these events that we are now chiefly concerned, with a view to a more exact knowledge of the spot where they occurred than has yet been reached by those who have hitherto written on this subject as historians, giving either dramatic condensations of the facts, like Parkman, or running commentaries on the old records, like Shea.

After the first landing of De Soto in Florida in 1529, no systematic attempt occurred to establish a colony in that peninsula until Jean Rihaut, the Huguenot admiral, anchored off the mouth of the St. Johns River, May 1, 1562, and called it the River of May, owing to the season and the amenity of the prospect. The establishment of a French Protestant colony in Florida resulted in stimulating the hate and jealousy of the Spaniards, for, as Parkman pithily observes, "the typical Spaniard of the sixteenth century was not in strictness a fanatic; he was bigotry incarnate." A powerful expedition, under Pedro Menendez de Aviles, Adelantado of Florida, was launched against the Huguenot colony. Headed off from the River of May by the fleet of Ribaut, Menendez, on the 8th of September, 1565, took possession of a port at the southward, and founded St. Augustine, the oldest town in the United States.

Providence certainly seemed to fight agains tthe Huguenots in Florida, for they never gained a permanent foothold there. The fleet of Ribaut was shattered by a terrible tempest, and driven on the sands near St. Augustine. Taking advantage of their distress, although France and Spain were then at peace, Menendez, by the practice of phenomenal dissimulation and treachery in the name of religion, which has been the cloak for so many foul deeds, succeeded in seizing the French Fort Caroline and every French man and woman in Florida, excepting some fifteen who escaped to the Indians. He butchered nearly all his prisoners, to the number of seven hundred, in cold blood, reserving a few for the galleys. This episode forms one of the bloodiest pages in the gory annals of Spain.

Owing to the bitterness of the religious feuds of the age, the extermination of the French in Florida seems to have aroused but little indignation at the court of France; for in those dark days religious bigotry counted for more than patriotism in the councils of the nations. Notwithstanding this fact, a few were found in France, besides the Huguenots, whose blood boiled when they learned of the massacres of their countrymen in Florida. Among them was Dominique de Gourgues, a seaman and soldier, known for daring and adventure. Amidst a conflict of authorities, I prefer to accept the statement of Charlevoix that he was a Roman Catholic. But he never forgot that he was first of all a Frenchman. When De Gourgues heard of the horrible deeds of Menendez he resolved on vengeance, and to that end obtained a commission from Montluc, lieutenant of the king in Guyenne, ostensibly to procure slaves on the coast of Africa. Mortgaging all his possessions, De Gourgues purchased and fitted out three small vessels. Two were of the style called roberges; the third was a patache, a l whose rig resembled that of a felucca,—that is, with lateen sails and low masts. Very likely she was also broad in the beam and of light draught to meet the special purpose of the expedition. All three vessels were provided with sweeps, which proved very useful, as we shall see, in the case of the patache, in the tortuous channels of the sea islands of Florida. This little squadron was manned by eighty picked mariners and one hundred and fifty troops, of whom one hundred, according to De Gourgues, were heavily armed arquebusiers.

It was not until after he had made several descents on the African coast ' De Gourgues announced to his rs what was the real purpose for which he had undertaken this voyage. "J'ai compte sur vous, je vous ai cru asses jaloux de la gloire de votre Patrie, pour lui sacrificer jusq'a votre vie en une occasion de cette importance; me suis-je trompe?" 1) Such in substance was the ringing address of De Gourgues to his companions. For a moment, grouped around the masts, while naught was heard but the wind in the sails and the foam at the bow, they made no response to these burning words. Then, like an electric spark, the glory of the opportunity, the rage for revenge, the fury of patriotism, kindled their hearts; with a universal shout, they besought the admiral to make a straight wake for the stronghold of the Spanish cutthroats and brigands, who had slaughtered their countrymen and ravished fortresses from France in time of peace.

It was a rosy afternoon in the early spring-time when the three French ships made the land at the mouth of the River of May. The Spaniards, far from suspecting them to be French, fired a salute as the little fleet sheered off and stood northward to find a congenial haven in the St. Mary's River. I use the word "congenial" advisedly. The Indians had, as usual, been treated with the treachery and brutality which everywhere characterised the Spanish conquest in America. The French and the Indians, on the other hand, had associated as harmoniously in Florida as in Canada. The head chief, Satouriona, and his dusky subjects were overjoyed to see the banners of France again, and entered into the plans of De Gourgues with the utmost heartiness. Spies, sent to examine the number and works of the Spaniards on the River of May, reported that they numbered upwards of four hundred men and had two new forts besides Fort Caroline, which the Spaniards had renamed Fort San Mateo. The new forts were situated on either side of the mouth of the river, evidently to command the passage.

In three days Satourina and his warriors completed their preparations to accompany De Gourgues against the Spaniards. Francois Bordelais was left with twenty men to guard

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1) Charlevoix.

the two largest of the ships. The third, which was doubtless the patache, we must conclude from the tenor of the narrative, accompanied the expedition; for a craft capable of transporting eighty men is mentioned in connection with the capture of the second fort. Where did the French find such a vessel, unless it was the patache?—while the boats of the squadron could not have been large enough or sufficiently numerous to transport the two hundred and ten Frenchmen who went to Fort George Island with De Gourgues. Part went in boats, and part in the patache, expressly provided with sweeps,—a vessel having low masts, visible only at a short distance, and spars lowering to the deck. Evidently De Gourgues selected a patache for exactly this sort of service in Floridian waters.

The Indians proceeding by land or in canoes, the French by boats and in the patache, De Gourgues finally succeeded, after much buffeting with angry waves and winds, in assembling his motley forces on what is now called Fort George Island. Still densely wooded in most parts with gigantic oaks and stately palms, at that time it presented a tangled jungle, excessively difficult to penetrate. All the afternoon they toiled with the closely matted underwood and swollen streams and pools. Had they been discovered by the enemy, their destruction would have been certain. Towards nightfall De Gourgues arrived on the banks of an arm of the sea,—undoubtedly what was once called Fort George Inlet, but now known as Talbot Inlet,—and continued the march along the sands, which are smooth and hard as a floor.

The following day, having been detained on the bank of another stream or inlet by the tide, the impatient French and Indians, burning with a thirst for revenge, and urgent to terminate the perilous suspense, took the Spaniards unawares after their noon meal, swept over the fort like a hurricane, and massacred the garrison of sixty to a man, those who escaped from the fort falling into an ambuscade of Indians.

The Spaniards at the fort on the opposite bank of the River of May, seeing and hearing the commotion, opened fire on the victors. De Gourgues caused four culverins, just captured, to be wheeled down to the shore, and under cover of this return fire embarked eighty of his soldiers in the large craft we judge to have been the patache, and pushed across to the opposite fort; the Indians, holding their bows and arrows in one hand over their heads, and swimming with the other, accompanied the patache. Smitten with terror, and well aware they had nothing to hope from the furious multitude swarming across the river the Spaniards flew pell-mell towards the forests, but were too late; for De Gourgues was already landing. A cloud of French and Indians, fierce as bloodhounds after fugitive slaves, threw themselves in the path of the flying wretches, and all but fifteen fell under the arquebuse and the tomahawk.

Fort San Mateo remained. Being but two miles and a half from the scene of these events, the garrison had the whole Quasimodo Sunday to reflect on the fate that awaited them in turn, while French and Indians were engaged making ladders to storm the stronghold of the bluff. By the aid of boldness and stategy, Fort San Mateo was also captured, and the entire garrison was butchered, save the governor, Gonzalo de Villaroel, and two or three companions, who escaped, and a handful of prisoners, reserved for more deliberate vengeance.

The three conflicts being victoriously concluded, and the three forts captured, De Gourgues ordered the captives to be dragged into his presence. His judgment hall was under the spreading oaks, pointed out to him as those on which Menendez had hanged the Frenchmen, with the inscription ver them, "Not as to Frenchmen, t as to Lutherans." As he surveyed the trembling wretches before him, we can imagine that if ever there is a rapture and a luxury in dealing out revenge, De Gourgues reveled in it then, as he looked down on them with terrible gaze. "Think you," he cried, "that a treachery so vile, a cruelty so abominable, could escape retribution. I, one of the humblest squires of my sovereign, have taken on myself to avenge this crime against a king so puissant and a nation so chivalrous... Although it is not possible to deal to you the full measure of suffering you have so richly earned, it is needful you undergo what a foe may inflict with honor, to the end that by your xample others may learn to respect e peace and amity which you have so wickedly and unhappily violated!" Then, with a wave of his hand, the avenger of France bade the executioners do their work. On the branches where the Spaniards were hanged De Gourgues caused the inscription to be fixed, "Not as to Spaniards or Moorish whelps, but as to traitors, thieves, and assassins." Thus did the heroic dominiqeue Gourgues literally exterminate the Spaniards from the River of May, and replace their banner of blood and gold with lilies of France.

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With his subsequent career we are not here concerned. My purpose in giving this rapid sketch of these thrilling events has been in order to enable the reader to follow me more readily in the consideration of certain points to which my interest in the subject has led me to give critical attention.

It is not difficult to trace the position of Fort San Mateo, for relics of that fortification, mounds and the like, yet remain there, although Parkman, on the authority of De Gourgues, states that by the command of De Gourgues "not one stone was left on another." Of the two other forts, unfortunately, no traces are now to be seen; but the one on the southern bank in all likelihood stood on the dunes near the building until recently occupied in summer as a nunnery.

The position of the first fort attacked, the one on the northern side of the river, is not so easy to ascertain, having, indeed, been long a matter of curious speculation. This may be in part because those who have written upon this subject have not visited the scene of these events, while those who have been there, and are familiar with the region, have failed to study the records with sufficient care. By some it has been assumed that this fort stood a few rods northeast of the hotel, on a bank overgrown with palmettos that overhangs the beach skirting Talbot Inlet, at the entrance to what is called Lover's Lane. It has been claimed that here would have been the most eligible spot to command the passage through the Inlet. But to accept this solution of the question would be to ignore not only the direct statements of De Gourgues, an eye-witness, of Charlevoix, and other chroniclers, but also the physical aspects of the situation.

A small fort, garrisoned by only sixty men, would have been in a most exposed position, if isolated from and unsupported by the other two forts; whereas by being further south and west it could at once command the inlet, and with the aid of the Mayport battery control the main ship-channel into the River of May. The narrative states that the French, after landing on the island, pushed through the forest until, at five in the afternoon, they came to a wide inlet, presumably Talbot Inlet. The account of De Gourgues leaves one to understand that they were then still considerably north of the Spanish Fort, for they marched along the sands, which run as nearly as possible north and south on the east side of the island as far as the southern entrance of Talbot Inlet. As the French are stated to have marched down the beach, and as there is no beach on the other side of the island, clearly the road followed was along Talbot Inlet. This route was suggested by one of the Indian chiefs, who perceived the great difficulty the French found in traversing the dense undergrowth of the primeval forests.

We are now brought face to face with the chief point of interest in this investigation: where stood the Spanish fort on Fort George Island? In considering the unvarnished statements of eye-witnesses or credible historians on this subject, we may justly conclude that the spot which enables us most clearly to harmonize the facts as recorded must evidently be, in all likelihood, the position where the fort stood, without regard to any supposed expediency in favor of some other site: first, the attacking party marched, as we have seen, along the beach until in sight of the fort, and was then arrested in its progress by a stream or inlet, until, the tide falling, the depth was reduced to a degree that allowed them to ford it; second, the fort was partially concealed by trees in the rear, which enabled the Indians, approaching from the interior of the island, to form an ambush; third, it faced the beach, to the edge of which the victors wheeled the captured cannon, and were thence able to annoy the enemy on the opposite side of the river, at short range, suited to the small guns of the period; fourth, we are distinctly told that the enemy were able to see the commotion from the opposite fort; and fifth, from this point, or not far from it, the Indians swam across to Mayport, which many of them could not have done except at a narrow part of the river.

Such are the points to harmonize in searching for the site of the Spanish fort on Fort George Island. That it was on that Island is indicated, in addition to the above points to be hereinafter considered, by the fact that the French followed the channels from the north, and proceeded by water until they were stopped by an island on which stood the fort. Naturally, therefore, they landed at the northern extremity of Fort George Island, about where the present "Homestead" mansion stands, amid its stately groves of oak festooned with Spanish moss. The fine roads, unsurpassed for attractiveness, which now make it so easy and agreeable to ramble or ride over the island, did not then exist; it was a dense, stubborn wilderness, excessively difficult for heavily armed troops to penetrate, impeded as they were with baggage and weighty arquebuses, breastplates and helmets, while the circumstances rendered rapidity of the last importance. Therefore, after toiling awhile in the forest, the French turned to the left and took to the beach, which is hard and for the most part was scarcely discernible from Mayport, in days before the spyglass had been invented. Still, in the last portion of the march, the movement of dark masses might have been perceived from the high dunes of Mayport, and therefore, De Gourgues very likely marched his men single file crouching close under the bank, tufted with palmetto. This necessitated more deliberate movement, and partly accounts for the length of time occupied in arriving within sight of the fort.

Along the southeastern extremity of Fort George Island there stretches a long, wide sand-pit, flanked upon the land side by knolls, rising both above the beach and the salt meadows, which are covered with long grasses and clumps of verdure. On one of these knolls was, in my opinion, the spot where the fort stood. A broad, winding creek separates the beach from these wooded hillocks. This is in all probability the water which delayed the attack of the French. The tide rises there from four to six feet, and to swim the creek would have been highly inexpedient, under the circumstances. But at low tide the creek is barely fordable, and it was then crossed by the daring adventurers wading up to their necks, holding their pikes and arquebuses over their heads, and the powder-flasks bound to their helmets.

From the beach, at the point, where we consider the fort to have been, the distance to the opposite shore is precisely five-eighths of a mile. This distance is quite within range of the culverine, which at any rate would have been able to prevent any reinforcements coming to the aid of the Spaniards or to attack the patache, which, following the channel along Talbot Inlet, evidently arrived at the scene of action about this time. Again, by running a few rods southwest of that point, the Indians would have had actually less than half a mile to swim from bank to bank—a distance easy of accomplishment for athletes like those naked, copper-colored savages, especially if the tide was coming in, which we are led to infer was the case, as the creek was crossed at extreme low tide, when it was on the turn.

The facts that the short-range guns of the time were available from Mayport to annoy the French across the river, and that the Indians swam to the southern bank, are to me conclusive that the fort stood either on one of the hummocks already mentioned, west of the beach and the creek, or at the spot where Pilot Town now stands, as indicated on the charts. But that it was not at the latter place seems, on the other hand, to be proved by the proximity of the fort to the creek. All the essentials to connect the site of the fort with the narrative are, in my opinion, found combined at the place I have indicated above. Shea somewhat skeptically says, "Is it creditable that De Gourgues' cannon and the artillery of the second Spanish fort kept up a duel across the mouth of the St. Johns, and the Indians swam it?" To this I respectfully reply that if we locate the site of the first fort in accordance with the foregoing observations and conclusions, these statements are not only credible, but certain. Indeed, I cannot see for a moment how a careful examination of the scene of these

events could result otherwise than in confirming the narrative of the old chroniclers.

Another argument, more hypothetical than those already adduced, but still worthy of attention as adding cumulative force to our objections to the location of the fort at Pilot Town, is found in the name of Fort George Island. Pilot Town is just beyond it; not on the island at all, but separated from it by a narrow creek,—so narrow, in fact, that it could not have been the creek mentioned by the historians. Now, what is the source from which Fort George Island derived its name? The descendants of Mr. Mackintosh, who came to the island from Scotland about a century ago, claim that he gave it the name as a reminder of his home in the mother country. But in an old map illustrating General Oglethorpe's expedition against St. Augustine, we find the island already called Fort George many years earlier. This seems to indicate either that the Spaniards gave that name to their fort, whence it was applied to the island, or that the present name is a corruption of the word Gourgues. Such changes in the pronunciation of proper names we all know to be excessively common. The inference is obvious as to the position of the fort.

The daring and romantic exploit of Dominique de Gourgues is of such heroic character, and so imperishable in the annals of our colonial period, that we offer no apology for attempting to add fresh clues towards the settlement of vexed points in the narrative of the vengeance he wreaked on the Spaniards in Florida.

Before closing, however, it may be worth while to call attention in this connection to another point relating to Fort George Island. The Indians, according to Charlevoix, asserted that the silver abounded in the mountains along the St. Johns River. Shea, who apparently had never been to the St. Johns River when he prepared his notes on this subject, states in a footnote, that these mountains were what is now known as St. Johns Bluff, which is forty feet high, and the site of Fort San Mateo. Is it not far more likely that these mountains are represented by Mount Cornelia, on Fort George Island, the highest land between the Navesink Highland and Key West, and more than twice the altitude of St. Johns Bluff? What if silver should indeed be discovered in Fort George Island?

S. G. W. BENJAMIN.

ISLAND HISTORY

Lying safely behind a protecting seaward island is the thousand-acre Fort George Island, the St. Johns River at its mouth. Its peaceful beauty today belies its tempestuous past. Happily that beauty reflects other times, too, times when the island earned the name, "Sweet Land by the Sea."

The happenings which have swept across the island began with the pre-historic Indians who lived briefly on the island as much as 1500 years ago. Their counterparts, known first to the Europeans, were the majestic Timucua whose likenesses we admire in the works of the French artist, LeMoyne, the first to draw the Indians in North America.

Sounds of fury echoed over the island when the French and the Spanish struggled for control of Florida in 1565. But harsh incidents were forgotten with the establishment of the Spanish Mission, San Juan del Puerto in 1587. Father Francisco Pareja left a record of the Indians and their lives as did Quaker missionary, Jonathan Dickinson, who visited there a century later.

The rivalry between nations for the control of North America reached again to Fort George Island when, in 1702, British colonists bore down from the north and destroyed the Florida missions. Three decades would pass before James Oglethorpe founded Georgia and invaded Florida. On his way south he named Amelia and the Talbots and St. George's Island, building a nearby island, Fort St. George. Oglethrope was forced to withdraw, but England gained possession of Florida 1763.

With this change of ownership of Florida the plantation era of development began on Fort George Island. John Bartram, the famous Philadelphia botanist, visited Mr. Hazard there, describing him as one of the best planters in Florida, and the island a large and rich one.

Florida was retroceded to Spain in 1783 and the island was soon granted to John McQueen, a friend of Washington and Lafayette, now a Florida resident. McQueen enlarged the plantation, growing an extensive cotton crop as well as the usual food crops. Here in a comfortable home he entertained travelers to and from St. Augustine. And as a Spanish officer he endeavored to keep peace along the river. He gave a place of refuge to women and children fleeing raiding parties of Indians and rebels who swooped down from Georgia in efforts to wrest Florida from Spain.

A new master of the island, John Houstoun McIntosh, bought the island in 1804, made advances in the develop of the plantation, but did not add to peaceful times for he the leader of the East Florida Republic, an organi inspired by the President of the United States to achiev delivery of Florida into American hands.

The last of three Scotsmen to own Fort George Island Zephaniah Kingsley who bought the island in 1817 McIntosh when he was forced by the Spaniards to flee to Georgia home. Under Kingsley virtually all tillable land on island was utilized. He was an enterprising businessman trader as well as planter and he brought the island to peak of success. Following his death in 1843, his neph Kingsley Beatty Gibbs, managed the property until disruption brought about by the Civil War.

EXHIBIT "D"

June 30, 1987

Honorable Bruce Vento
Chairman
House Subcommittee on National Parks and
Public Lands
House Annex I, Room A812
Washington, D.C. 20515

Dear Bruce:

Attached you will find a letter and petition initiated by Mr. William E. Arnold, the vice president of the Friends of Fort George Island, Inc. As Mr. Arnold points out in his letter, the petition submitted by Fairfield Communities, Inc. against the inclusion of Ft. George Island in the Timucuan Ecological and Historic Preserve consists of a total of only 6 residents and/or property owners on the island. The petition that Mr. Arnold is submitting in support of Fort George Island's inclusion in the Preserve consists of signatures from 23 Fort George Island residents and property owners. A petition such as this presents a very strong case for the proposed Timucuan Preserve to include Fort George Island, and I therefore submit this petition for the record.

Thank you for all of your help in this matter and your efforts to move this bill quickly.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB:mp

PETITION

June 14, 1987

The undersigned property owners and or residents on Fort George Island do hereby petition to include all of Fort George Island in the "Timucuan Ecological and Historic Preserve" as described in Bill H.R. 1983.

We believe that it is necessary to protect the historic sites, plantlife, wildlife, surrounding salt water marshes and waters on and around the Island. Inclusion of all of Fort George Island in this bill (H.R. 1983) would accomplish this.

Signature	Print Name and Property Description
1 Doris B Chappelle	Doris B Chappelle - Lot 4(ex) Sec. 18, T.1S., R.29E and 5 acres Lot 50 Re: 169233-0000
2	LEO E. AND DOROTHY A. CHAPPELLE 13.23 ACRES MORE OR LESS OF LOT 507
3. Dorothy A. Chappelle	
4 Jr.	WILLIAM E. ARNOLD, JR. LOTS 6,7,8,9 RIBAULT CORP. PROPERTIES SEC. A, P.B. 13-76
5. Carolyn H Hogan	Three Acres of Lot 515 . Hogan and Sackett are beneficiaries of Trust Fund held by American National Bank of Jacksonville, Florida
6. Guy W. Sackett, Jr.	
7 Nancy E Lutz	Nancy E Lutz Lots 2 3 8 9 Block D. Ft. George Corp Replat P.B. 14-43
8. Geraldine Leigh	GERALDINE Leigh Parcel #23 Part of Lot 513 subdivision of Fort George Island as recorded in Deed Book AM page 377 lying in Kingsley grant Section 3 Township 1 South, Range 29 East
9 Rodney D. Ayal	Pt. of Lot 510, Ft. George Island Plat AM-378 RE: 169230-0100
10 Mrs. A. C. Williams	Pt. of Lot 3, Sec. 18, T 1 S, R 29E and Part Lot 500, Ft. George Island Plat AM-378 RE: 168192-0030 & 169228-2020)

PETITION
June 24, 1987

Page____

Signature	Print Name and Property Description
11. Evelyn J. Lucas	James and Evelyn Lucas Lots 60 & 61, Fort George
12. James L. Lucas	Island, Plat- AM-378, RE-169227-0000
	Helen Oliver
13. Helen Oliver	Pt of lot 5 E Plat AM 378
14. Susan R. Baldwin	Lots 9 & 10 Block O Ft. George Island PB 14-43
15. M. [illegible] Keane	LOTS 2+3 BLOCK O FT GEORGE CORP REPLAT P.B. 14-43
16 ✓	Lot 4, Ribault Corp. Prop. Sec. A, P.B. 13-76.
17 ✓ William M. Blum	Lots 1 & 16 Block B Fort George Corp Replat P.B. 14-43
18 ✓ Camillus S. L'Engle, Jr.	LOTS 6 and 7, Block A FORT GEORGE CORPS REPLAT P.B. 14-43.
19 ✓ Dr. and Mrs W. J. Keane	Lots 18, 19, 20, 21, Ribault Corp Properties - Sec. A, P.B. 13-76
20 J. Alvin Rigatti Jr.	Lot 5, Ribault Corp Properties Sec A PB [illegible]
21	Lot 9, Blk A, Ft. George Corps
22 Edward H. Owen, Jr.	PART OF LOT 3 SEC. 13 T 1S R 29E. AND PART OF LOT 5&5, FT. GEO. ISLAND, PLAT AM-378

PETITION
June 24, 1987

Page____

Signature	Print Name and Property Description
23. Vila C. Dinnman Resident 16 yrs address: 10942 E. Ft. George Rd.	ULLA C DENMAN DO NOT HOLD TITLE TO ANY LAND

PETITION
June 24, 1987

The undersigned property owners and/or residents on Fort George Island do hereby petition to include all of Fort George Island in the "Timucuan Ecological and Historic Preserve" as dercribed in Bill H.R. 1983.

We believe that it is necessary to protect the historic sites, plantlife, wildlife, surrounding salt water marshes and waters on and around the Island. Inclusion of all of Fort George Island in this bill (H.R. 1983) would accomplish this.

Signature	Print Name and Property Description
Nancy K. O'Donnell	Pt. of Lot 51C, Ft George Isla...
Eugene E. O'Donnell	Plat AM-378 Re: 169230-038

File Copy

CHARLES L. BENNETT
MEMBER
3RD DISTRICT FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE

MERCHANT MARINE AND FISHERIES
COMMITTEE

CHAIRMAN OF FLORIDA CONGRESSIONAL
DELEGATION

Congreſs of the United States
House of Representatives
Washington, DC 20515

RAMON L. DAY
ADMINISTRATIVE ASSISTANT

JOBY H. MOONEY
LEGISLATIVE ASSISTANT

SHARON H. SIEGEL
BARBARA L. PETHEROLF
DARLA E. SMALLWOOD
RUSSELL W. HOUSTON
ETHEL M. SCHISSELL
MIRIAM E.A. WOLFF
SALLY A. GARRETT
GREGORY M. WILLIAMS
STAFF

WASHINGTON OFFICE:
2107 RAYBURN BUILDING
WASHINGTON, DC 20515
TELEPHONE 202-225-2501

JOHN W. POLLARD, JR.
BRENDA C. DONALDSON
DONNA M. WELDON

JACKSONVILLE OFFICE:
314 PALMETTO STREET
JACKSONVILLE, FL 32202
TELEPHONE 904-791-2587

File
Lg
HR 1983

July 29, 1987

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands, National
Parks and Forests
Dirksen 308
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find a petition which I received expressing support for my legislation to create the Timucuan Preserve in Florida. H.R. 1983 recently passed the House and has been referred to your subcommittee for consideration. I would appreciate your assistance in marking up this legislation at the earliest possible date. If I can be of any assistance, please do not hesitate to let me know.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB/rwh

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands,seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Diane Bryant	301 W. Bay St
Joyce Walker	301 W. Bay St
Jerry Lee Lloyd	301 W. BAY ST.
[illegible]	301 W. Bay St
Juliette Cobb	301 W. Bay St.
Janice Jones	301 W. Bay St.
Jeannie Bailey	301 W. Bay St.
Jimmy Strickland	301 W Bay St
Linda Hutson	301 W Bay St
[illegible]	301 W Bay St

32202

PETITION TO SUPPORT

HOUSE BILL

HR 1983

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Thank you in advance for your support.

SIGNED:

Gelgene Braxin	Regis Beauty Shop - Regency Square
Jim Smith	
Maria R. Catafe	"
[illegible]	"
Amelia M. Mauricio	"
Maria Mauricio	"
L. Makowich	"
Harriet Gitlinger	3936 Marnelo Cir. So. Bty 3221
Victoria Gomez Lyon	Regis
Mollie Shields	3151 Peterson St, Jax, Fla 32209

PETITION TO SUPPORT

HOUSE BILL

HR 1983

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Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Patricia G. Bennett	8479 Newton Rd 32216
Blair F. Bennett	8479 Newton Rd. 32216
Edith Bennett	3316 White Ave 32207
[illegible] J. Bennett	4964 Empire Point 32207
K. B. Bennett	4964 Empire Point 32207
Edward Myers	2114 White Ave 32207
Tracy B Carpenter	5239 N Santa Monica Blvd 32207
Gracie Bennett	5239 N Santa Monica Blvd 32207
Carl Olive	[illegible] Rd S. #134 32216
Ethel B. Dunne	1242 Kennard St. 32208

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands, seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Gail Fountain	1757 Palmdale St - Jax FL 32208
[illegible]	[illegible]
Constance [illegible]	[illegible] St Jax 32208
[illegible]	[illegible]
Wayne E. [illegible]	401 Monument Rd #226 32211
[illegible]	[illegible]
Marianne E. [illegible]	6236 Fordham Cir E. 32217
[illegible]	[illegible]
[illegible]	[illegible]
Abigail [illegible]	1044 STOkes ST Jax 32221

OFFICE OF THE MAYOR

THOMAS L. HAZOURI
MAYOR

JACKSONVILLE, FLORIDA
32202

September 3, 1987

The Honorable Charles E. Bennett
House of Representatives
2107 Rayburn Building
Washington, DC 20515

Dear Congressman Bennett:

Thank you for your recent and very informative letter describing the background and current status of the legislation (H.R. 1983) which would create the Timucuan Ecological and Historic Preserve. It is obvious that the territory involved possesses unique natural and historic qualities that should be protected and accessible to the increasing number of citizens of Jacksonville and the surrounding areas. I am firmly committed to pledging my support to the aforementioned legislation.

Your interest in protecting the City's pristine areas of exquisite natural beauty and ecological value and its historic resources is greatly appreciated. If I can be of any further assistance to you in regard to this matter, please do hesitate to contact me at your convenience.

With all best wishes and warmest regards, I remain

Sincerely yours,

Tommy

THOMAS L. HAZOURI

TLH/rnl

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

August 12, 1987

The Honorable Charles E. Bennett
Congressman
107 Rayburn Building
Washington, D.C. 20515

Dear Congressman Bennett:

Thank you for forwarding on to me a copy of H.R. 1983, as well as the Committee report on this legislation. You can be assured of my complete support for this significant proposal to safeguard some of Florida's most important historical and ecological values.

Moreover, I strongly agree with your conclusion that the Conservation and Recreation Lands program represents an excellent vehicle for combining state, federal and local participation in land acquisition efforts. I feel confident that the many fine attributes of this proposal should ensure a priority ranking which is commensurate with its considerable benefit to the citizens of our state. There is little question but that our natural heritage would be vastly enriched if the legislation you are sponsoring results in the preservation of such fragile and unique lands.

Thank you again for taking the time to share this important information with me.

Sincerely,

Bob
Robert A. Butterworth
Attorney General

RAB/ylj

An Affirmative Action/Equal Opportunity Employer

FLORIDA CATHOLIC CONFERENCE
314 BARNETT BANK BUILDING
POST OFFICE BOX 1971
TALLAHASSEE, FLORIDA 32302

PHONE (904) 222 3803

THOMAS A. HORKAN, JR.
EXECUTIVE DIRECTOR

August 25, 1987

Senator Dale Bumpers, Chairman
Senate Public Lands Subcommittee
Room 308, Dirksen Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

We would like to urge your support and approval of Senate Resolution 1387 relating to the Timucuan Ecological and Historic Preserve. The Spanish and Indian heritage of this country has long been overlooked, but incredible discoveries are being made about the early days of this nation, long before the pilgrims landed in Plymouth Rock or Jamestown was founded.

This bill will involve Ft. George Island in Florida, where Father Francisco Pareja was the only minister of the Catholic Church in the entire continental United States, at times during the 1500's. Father Pareja wrote books in the Timucuan Indian language as well as in Spanish.

This legislation involves many very important sites and heritages, both Catholic and non-Catholic. The preservation of them will benefit this entire nation. We urge your support for it.

Yours very truly,

THOMAS A. HORKAN, JR.

TAH:sp
cc: Senator Lawton Chiles
Senator Robert Graham
Rep. Charles E. Bennett

ARCHDIOCESE OF MIAMI • DIOCESE OF ST. AUGUSTINE • DIOCESE OF ST. PETERSBURG • DIOCESE OF ORLANDO
DIOCESE OF PENSACOLA-TALLAHASSEE • DIOCESE OF PALM BEACH • DIOCESE OF VENICE

STATEMENT IN SUPPORT OF H. R. 1983

by William N. Thurston

Supervisor, Historic Sites Survey and Registration

Florida Division of Historical Resources

Sept 29/1987

My name is William N. Thurston. I am Supervisor of Historic Sites Survey and Registration with the Florida Division of Historical Resources. I am here on behalf of Mr. George W. Percy, Director of the Division of Historical Resources and State Historic Preservation Officer for the State of Florida, to speak in support of the proposal before the Committee for the preservation of wetlands and historic and prehistoric sites in the St. Johns River Valley in Florida.

Our concern in this matter is with the potential benefits, both direct and indirect, that passage of the bill may have in regard to the preservation of prehistoric and historic cultural resources within the proposed Preserve. Florida has participated in the federal historic preservation program established by the National Historic Preservation Act of 1966 (PL 89-665) since its inception. In addition, we have, through State legislation, steadily expanded the scope of our own historic preservation activities. We feel that the potential benefits of House Bill 1983 go beyond the specific provisions granting authority to the Secretary of the Interior to acquire certain designated properties and providing for integrated administration and interpretation of historic sites and the information derived from them. Passage of the bill would provide formal recognition of the value of the historical resources within the Preserve. This would enhance not only our efforts to preserve these resources, but our endeavor to stimulate public interest and concern for similar sites in other areas of the state as well.

Others have testified or will testify to the ecological value of the wetlands which make up the bulk of the area encompassed in the proposed Preserve and the importance of preserving the wildlife and aquatic habitats it contains. I can say, however, that the wetlands environment has been extremely important to the human experience, both prehistoric and historic, in this area, and has significantly influenced the historical development of Florida since its discovery and settlement by Europeans in the 16th century.

The abundance of small game and aquatic life attracted early prehistoric settlement of the area and supported the development of one of the major aboriginal cultures in North America, known to anthropologists as the St. Johns culture. This in turn evolved into the Timucuan society which occupied the area at the time of European exploration and settlement in the 16th century. For the next three hundred years, the area was contested, sometimes violently, by the European colonial powers, Spain, France, and England; by the rebellious American colonies in the Revolutionary War; and finally, by Union and Confederate forces during the Civil War. In the peaceful periods between these various conflicts, the waterways of the area provided access for the settlement and economic development of northeast Florida.

Growth and development in northeast Florida in the more recent past have made their own contributions to the inventory of historic sites in the region. In the process, however, many of the physical reminders of prehistoric occupation and earlier historical development have been obscured or obliterated. Those that remain are subject to real or potential threat of loss as development pressures continue to expand.

The sites enumerated in section 202 of the bill represent important historic events or developments in the St. Johns River Valley region. Forts Gabriel and San Estaban were used by the Spanish in the 16th century to control access to the St. Johns River and thus protect the "back door" to the main Spanish stronghold at St. Augustine. Fort Dos Hermanas on the northern tip of Little Talbot Island dates from the late 18th century, and formed a part of the Spanish defenses against American expansionist efforts to annex Florida to the United States following our successful bid for independence. The early 18th century British fort on Fort George Island reflects an abortive attempt to include the area in the Georgia colony. The British fort on St. Johns Bluff was erected to protect the Florida colony during the British occupation from 1763 to 1783. The Thomas Creek Battlefield was the site of the major engagement of the

Revolutionary War in Florida, in which American forces attempting to depose the British authorities in Florida were repulsed. The locations of these sites has been generally established, but have not as yet been verified by archaeological evidence.

The site of the 17th century Mission San Juan del Puerto has been verified. Archaeological excavations carried out in 1985 proved this to be one of the major mission sites in Florida, and it was listed in the National Register of Historic Places in March, 1986. The site is in private ownership, but has been set aside for preservation and interpretation as an historic site by the owners.

The Kingsley Plantation is also listed in the National Register of Historic Places. It is owned by the State of Florida and maintained by the Florida Division of Recreation and Parks. This site contains the only intact remnants of the plantation economy on which colonial Florida was based in the late 18th and early 19th centuries.

The Spanish-American War fortification on St. Johns Bluff is an example of military architecture and construction of the period, and reflects the awakening of concern for coastal defense that the war engendered. The site is in private ownership. While it is not presently threatened, it may be in the future.

Important as the physical preservation of significant historic sites may be, its benefits to the general public depend on adequate and appropriate interpretation. We are therefore pleased that section 203 of the bill calls for the interpretation of historic sites to be integrated in the overall administration and interpretation of the Preserve. We feel that this offers the potential for the development of an interpretive center that can provide visitors with a broad understanding of the relationships of individual sites that may be widely separated and date from different periods of history. In addition, centralized interpretation may provide the most appropriate and effective means of presenting information on sites that may be difficut to reach, or which may be too fragile to withstand the impact of extensive visitor traffic.

In conclusion, we feel that passage of this bill will further efforts to preserve the historic resources within the proposed Preserve, as well as the ecological resources of its wetlands environment.

TESTIMONY OF LARRY GERRY, DIRECTOR JACKSONVILLE OFFICE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
BEFORE THE SUBCOMMITTEE ON Public Lands, National Parks and Forests [illegible]
REGARDING HR 1983

Sept. 29th, 1987

ON BEHALF OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (SJRWMD), I WOULD LIKE TO THANK THE DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF THE BILL BEFORE YOU TODAY. THE SJRWMD IS ONE OF FIVE DISTRICTS WITHIN THE STATE OF FLORIDA WITH THE RESPONSIBILITY OF MANAGING BOTH GROUND AND SURFACE WATER RESOURCES. THE BOUNDARIES OF THE SJRWMD INCLUDE ALL OR PART OF 19 COUNTIES IN NORTHEAST AND CENTRAL FLORIDA.

HR 1983, WHICH AUTHORIZES THE SECRETARY OF THE INTERIOR TO CREATE THE TIMUCUAN PRESERVE, WOULD PROVIDE FOR THE ACQUISITION AND PRESERVATION OF ABOUT 35,000 ACRES OF VALUABLE COASTAL HABITAT. SEVERAL SIGNIFICANT HISTORICAL SITES LIE WITHIN THE PROPOSED PRESERVE, HOWEVER, I WILL RESTRICT MY COMMENTS TODAY TO THE WATER RESOURCE RELATED ASPECTS OF THE BILL, NAMELY, THE VALUABLE WETLANDS AND ASSOCIATED UPLAND AREAS, AND THEIR RELATIONSHIP TO THE ECONOMY AND ECOLOGY OF NORTHEAST FLORIDA.

A SIGNIFICANT PORTION OF THE 35,000 ACRE TRACT IS RELATIVELY PRISTINE, UNDEVELOPED COASTAL SALT MARSH. SALT MARSH SYSTEMS, SUCH AS THESE, ARE VALUABLE BECAUSE (1) THEY PROVIDE CRITICAL

HABITAT FOR COMMERCIALLY IMPORTANT SPECIES OF FISH AND SHELLFISH, (2) THEY REMOVE POLLUTANTS FROM OUR COASTAL WATERS, AND (3) THEY PROVIDE RECREATIONAL AND AESTHETIC ENJOYMENT.

COMMERCIALLY IMPORTANT SPECIES SUCH AS MENHADEN, SHRIMP, BLUE CRABS, AND OYSTERS DEPEND ON COASTAL SALT MARSHES FOR SURVIVAL. OTHER SPECIES HAVING HIGH RECREATIONAL VALUE, SUCH AS CROAKER, SEA TROUT, FLOUNDER, AND RED DRUM, ALSO DEPEND ON THESE SALT MARSH SYSTEMS. THE VAST MAJORITY OF THE TOTAL DOCKSIDE DOLLAR VALUE OF FISHERIES IN NASSAU AND DUVAL COUNTIES IS COMPRISED OF SPECIES THAT ARE DEPENDENT ON THE TYPES OF HABITAT PROPOSED FOR PROTECTION IN THIS BILL.

THE ABILITY OF WETLANDS TO ENHANCE WATER QUALITY BY REDUCING THE POLLUTANT LOAD OF THE WATER COLUMN HAS INDIRECT ECONOMIC VALUE. NUMEROUS SCIENTIFIC STUDIES HAVE SHOWN THAT FRESHWATER AND SALTWATER WETLANDS CAN REDUCE WATER COLUMN CONCENTRATIONS OF POLLUTANTS INCLUDING NUTRIENTS SUCH AS PHOSPHORUS AND NITROGEN, HEAVY METALS, MAN-MADE ORGANIC CHEMICALS, SUCH AS PESTICIDES, AND PETROLEUM HYDROCARBONS. THE JACKSONVILLE AREA IS GROWING RAPIDLY AND WITH THIS GROWTH WE CAN EXPECT AN INCREASE IN POLLUTANT LOADING TO THE ESTUARIES. THE PRESERVATION OF THESE WETLANDS WITHIN THE PROPOSED TIMUCUAN PRESERVE WILL HELP MITIGATE THE ADVERSE IMPACT OF GROWTH ON WATER QUALITY AND, THUS, WILL HELP MAINTAIN FISH AND SHELLFISH PRODUCTION.

THE SALT MARSH VALUE WHICH IS MOST DIFFICULT TO QUANTIFY IS THE CONTRIBUTION TO THE QUALITY OF LIFE THROUGH RECREATIONAL AND AESTHETIC ENJOYMENT. AS AN INDICATION OF THE ENORMOUS

PSYCHOLOGICAL VALUE OF ONE RECREATIONAL ACTIVITY, SPORT FISHING, CONSIDER THAT 243 MILLION ANGLER DAYS WERE SPENT IN SALT WATER FISHING IN THE UNITED STATES IN 1975 (PETERS, AHRENHOLZ AND RICE, 1978). OTHER RECREATIONAL PURSUITS INCLUDE HUNTING, BOATING, BIRD-WATCHING, AND VARIOUS ARTISTIC ENDEAVORS. ALTHOUGH THE VALUES OF SUCH ACTIVITIES CANNOT BE ACCURATELY QUANTIFIED THEY SHOULD NOT BE CONSIDERED INSIGNIFICANT. IN FACT, BECAUSE OF THE RELATIVELY PRISTINE CONDITION OF MUCH OF THE ACREAGE INCLUDED IN THE PROPOSED TIMUCUAN PRESERVE AND BECAUSE OF THE INCREASING RARITY OF THIS KIND OF HABITAT, THE RECREATIONAL AND AESTHETIC VALUE OF THE PRESERVE MAY EVENTUALLY BECOME ITS GREATEST CONTRIBUTION TO THE CITIZENS OF NORTHEAST FLORIDA.

I WORK IN THE PERMITTING DEPARTMENT OF THE WATER MANAGEMENT DISTRICT AND I AM FAMILIAR WITH THE WATER AND WETLAND RELATED REGULATORY PROGRAMS OF THE OTHER STATE AND FEDERAL AGENCIES. ALTHOUGH AT LEAST THREE AGENCIES (TWO STATE, ONE FEDERAL) PROTECT COASTAL SALT MARSHES, THEIR PROTECTION IS NOT GUARANTEED. THE EFFECT OF STRONG WETLAND PROTECTION LEGISLATION HAS BEEN THE ELIMINATION OF WHOLESALE WETLAND DESTRUCTION, HOWEVER, A SLOW DEGRADATION CONTINUES TO OCCUR AS A RESULT OF MANY SMALL REGULATORY DECISIONS, EACH OF WHICH CONSIDERED ALONE CAUSES INSIGNIFICANT HARM, E.G., JUST ONE DOCK, JUST ONE LAUNCH RAMP, JUST ONE SEPTIC TANK, JUST A LITTLE FILL. THE LONG-TERM CUMULATIVE EFFECT OF THESE DECISIONS, HOWEVER, IS SIGNIFICANT. ALTHOUGH STATE AND FEDERAL WETLAND REGULATIONS HAVE HAD A VERY POSITIVE EFFECT ON THE RATE OF HABITAT DEGRADATION, OUR NATURAL

SYSTEMS STILL SUFFER FROM WHAT DR. WILLIAM ODUM, OF THE UNIVERSITY OF VIRGINIA, CALLS THE "TYRANNY OF SMALL DECISIONS". ACQUISITION OF THE SALT MARSHES AS PROPOSED IN THIS BILL ALONG WITH SOME ADJACENT UPLANDS, WOULD ELIMINATE THIS SLOW DEGRADATION OF ONE OF THE MOST OUTSTANDING NATURAL RESOURCES IN NORTHEAST FLOIRDA.

THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT SUPPORTS THE ACQUISITION OF WETLANDS AND CERTAIN ADJACENT UPLAND AREAS PROPOSED IN H.R. 1983 BECAUSE WE CONSIDER THIS TO BE THE MOST EFFECTIVE MECHANISM FOR THE LONG-TERM PROTECTION OF THESE VALUABLE COASTAL SYSTEMS.

UNIVERSITY OF NORTH FLORIDA
4567 ST. JOHNS BLUFF ROAD, S.   JACKSONVILLE, FLORIDA 32216

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF NATURAL SCIENCES
904-646-2830

Testimony in support of H.R. 1983

Mr. Chairman:

My name is Carole DeMort. I am Chair of the Department of Natural Sciences at the University of North Florida. I have a Ph.D. in Marine Biology from Oregon State University. I have been studying the estuarine ecology of the St. Johns River for fourteen years and have presented invited papers to numerous conferences, and scientific societies, including the American Institute of Biological Sciences and the Florida Academy of Sciences. I have published articles in refereed journals and worked as an environmental consultant for federal, state, county, and private agencies. I am giving this testimony in strong support of H.R. 1983, a bill that would set aside approximately 35,000 acres of the lower, northeast section of the St. Johns River Valley for the preservation of the wetlands and historic sites within this designated area.

I consider myself a wetlands ecologist and would like to address this aspect of the bill. I have worked extensively in the area described by this bill and was involved in the original Ft. George Island Carrying Capacity Study completed by the Jacksonville Planning Board in the mid 1970's. I have studied both the wetlands and the adjacent upland forests in the Ft. George Island area. The wetlands adjacent to Ft. George Island contain some of the richest saltmarsh still remaining in the lower St. Johns River Valley. Much of the specific wetlands contained within the bill are nursery areas for both White and Brown Shrimp. This is also a prime nursery area for flounder, tarpon, spotted sea trout, and jack crevalle.

The saltmarsh system in this area consists primarily of Spartina or Smooth Cordgrass. Spartina marshes are the most productive types of saltmarshes. In general, Spartina saltmarsh is much more productive than freshwater marshlands. Much of the original Spartina marsh system of Northeast Florida has been drained or filled and lost as habitat for fish and waterfowl. The wetlands included within this bill support winter waterfowl feeding grounds for migratory species, provide a food supply for resident waterfowl populations that nest in adjacent upland forests, and provide nursery grounds for shrimp, blue crab, and a

An Equal Opportunity Institution

wide variety of economically important finfish.

Those of us who have been studying wetlands over an extended period of time and who have looked at the decline in shrimp populations in North Florida feel that this decline is due primarily to habitat loss and degradation. Preserving 35,000 acreas will not reverse the population declines we have been observing in both finfish and shellfish species. However, I feel it would be a major step in the direction that we must take if we are really trying to preserve the qualitiy of the environment that we have left! We can't pretend to be interested in wildlife or waterfowl management if we continue to lose valuable breeding and nursery habitat. This bill would save a small portion of top quality nursery habitat and the vital adjacent uplands.

Sincerely,

Carole Lyle DeMort

Carole Lyle DeMort
Chairperson, Dept. of Natural Sciences
University of North Florida
Jacksonville, Florida 32216
6/15/87

The Lower St. Johns River: An Ecological Evaluation.

Dr. Carole L. DeMort
Department of Natural Sciences
University of North Florida
Jacksonville, Fl. 32216

The St. Johns River is somewhat unique among American rivers in that it is a "black water" river with a shallow euphotic zone but relatively high productivity. The submergent vegetation varies from Ulva and Enteromorpha near the mouth to Eichornia , Typhus , Pontederia , Myriophyllum , and Vallisneria in the freshwater regions just south of Jacksonville. Due to the high turbidity of the lower St. Johns, submergent vegetation is limited to the shallow waters adjacent to the shoreline. Extensive salt marshes exist in northeastern Duval County along the northern boundary of the St. Johns drainage and along the Intercoastal Waterway. The marshes that drain into the St. Johns are characterized by extensive areas of Juncus marsh and smaller areas of medium and short Spartina marsh.

The lower St. Johns provides spawning and nursery habitat for a large number of economically important fish species. The following commercial or sports fishes either spawn in or live in the St. Johns during part of their life cycles: lady fish, tarpon, threadfin herring, atlantic menhaden, striped mullet, white mullet, spadefish, pinfish, spotted sea trout, weakfish, red drum, black drum, croaker, spot, northern kingfish, jack crevalle, florida pompano, pigfish grunt, summer flounder, bluefish, butterfish, and king mackeral. Table 1 lists the fish species that have been collected by UNF marine science students in the lower St. Johns from 1980-1985. Table 2 lists the species composition of fish larvae identified from Sisters Creek for three summer collecting periods. This list represents total number of larvae collected from semi-monthly plankton tows from May through August at the mouth of Sisters Creek.

There appears to be a trend toward decreased numbers of fish larvae. This downward trend has also been observed in the numbers of juvenile fish collected in seines at various locations along the lower St. Johns from Sisters Creek to Lake George. Species that seem to be decreasing the most in terms of juveniles collected are tarpon, spotted sea trout, red drum, black drum, and king mackeral. Mullet, spot, and croaker do not seem to be decreasing.

Blue crabs are abundant in the St. Johns. I have heard complaints from crabbers that their catches are down, especially in terms of the larger specimens. This may be the effect of fishing intensity rather than lowered total population densities. Their appears to be a shift in prime juvenile blue crab areas, with an increase in juvenile populations in the shallow waters adjacent to the Buckman Bridge (I295).

The populations of commercial size white and brown shrimp are decreasing. The population densities, as with most marine invertebrates, fluctuate widely from year to year; but plotted over several years there is a downward trend in catch per unit effort. This seems to be due to a decrease in suitable nursery areas for the postlarval and juvenile shrimp within the St. Johns river system. We have not detected significant decreases in the numbers of postlarvae collected in plankton tows at the mouth of the St. Johns. This indicates that approximately the same number of postlarvae are entering nursery areas but fewer are migrating out as subadults, probably due to the effects of increased competition.

Recommendations

We need to stop the destruction of salt marshes, freshwater wetlands along the tributaries, and eelgrass beds. I have been studying the lower St. Johns River since 1972. During those fourteen years, I have seen the eelgrass beds along the river decline significantly, large areas of tributary wetlands degraded by landfills that were allowed too close to adjacent wetlands, construction that was permitted adjacent to freshwater wetlands or salt marshes either without effective setback lines or without adequate enforcement of permit requirements. We have the laws on the books to halt the further degradation of these wetlands. We need to enforce them and to effectively monitor existing construction permits.

Maintenance dredging will continue to present a problem in terms of its effects on fisheries resources. I realize that periodic dredging is necessary to maintain the channels and dock areas. However, dredging causes re-entrainment of toxins that have been sequestered in the sediments. This re-entrainment is potentially fatal to larval and juvenile stages of fish and shellfish that may be in the area at the time of dredging. Even if fatalities do not occur, the toxins can affect developmental sequences, lower disease resistance, or reduce growth rates. Many of the toxins sequestered in the bottom sediments of the St. Johns and its tributaries in the Jacksonville area are mutagenic or teratogenic. These include PCB's, hydrocarbons, heavy metals, and pesticides. Maintenance dredging would have the least harmful effects on fisheries resources if it were carried out during the "off season" in terms of spawning and nursery utilization of the river system. Do it when the larvae and juveniles aren't in the dredged area. Such biological factors do not seem to be considered when dredging contracts are negotiated.

The lower St. Johns River area is feeling the impact of increased development, both industrial and residential. Point and non-point source pollution is a serious problem for the river system. There are too few regional sewage treatment plants to serve the growing populations of the area. Too many areas have poorly maintained or inadequate private systems or no systems at all. The solution to this problem is simple--more regional sewage treatment facilities must be constructed. Achieving this goal, given the present economic environment, is impossible in the near future. Failing this, we need to curtail development in areas whose treatment facilities are overloaded or inadequate. Moratoriums must be established and enforced until acceptable effluent standards can be met.

The St. Johns River is capable of flushing many of the pollutants from its system. As it exists today, it is a much healthier river than most of the urban rivers in the United States. The estuary is highly productive, bordered by some of the most extensive salt marshes on the east coast of Florida. This productivity needs to be maintained and further degradation of the estuary and adjacent salt marsh prevented by giving the Northeast Florida region the manpower necessary to enforce the environmental laws that protect this resource.

Table [illegible]. Species list of fish collected from the lower
St. Johns River

Alosa pseudoharengus - Alewife
Anchoa hepsitus - Striped anchovy
Anchoa mitchilli - Bay anchovy
Brevoortia tyrannus - Atlantic menhaden
Caranx hippos - Jack crevalle
Chaetodipterus fiber - Atlantic spadefish
Chilomycterus schoepfi - Striped burrfish
Cynoscion nebulosus - Spotted seatrout
Cynoscion regalis - Weakfish
Cyprinodon variegatus - Sheephead minnow
Dorosoma cepedianum - Gizzard shad
Elops saurus - Ladyfish
Eucinostomus argenteus - Spot
Fundulus cingulatus - Banded topminnow
Fundulus confluentus - Marsh killie
Fundulus grandis - Gulf killie
Fundulus heteroclitus - Mummichog
Fundulus majalis - Striped killie
Fundulus similis - Longnose killie
Gobionellus spp - Goby
Gobiosoma spp - Goby
Haerulon parri - Sailor's choice
Hypsoblennius hentz - Carolina blenny
Lagodon rhomboides - Pinfish
Leiostomus xanthurus - Spot
Megalops atlantica - Tarpon
Menidia beryllina - Silversides
Menticirrhus saxatilis - Northern kingfish
Micropogon undulatus - Atlantic croaker
Mugil cephalus - Striped mullet
Mugil curema - White mullet
Opisthonema oglinum - Threadfin herring
Opsanus tau - Toadfish
Orthopristis chrysoptera - Pigfish
Paralichthys dentalus - Summer flounder
Paralichthys lethostigma - Southern flounder
Pogonias cromis - Black drum
Pomatomus saltatrix - Bluefish
Prionotus tribulus - Bighead searobin
Poronotus triacanthus - Butterfish
Scianenops ocellata - Red drum
Scomberomorus cavalla - King mackeral
Selene vomer - Lookdown
Sphaeroides maculatus - Northern puffer
Strongylura marina - Atlantic needlefish
Symphurus plagiusa - Blackcheek tongue fish
Syngathus floridae - Florida pipefish
Synodus foetens - Inshore lizardfish
Trachinotus carolinus - Florida pompano
Trichuirus lepturus _ Atlantic cutlassfish
Trinectes maculatus - Hogchoker

Table 2. Species Composition of Fish Larvae identified from mid-flood Plankton Collections during Summer 1979, 1980 and 1985 at Sister's Creek

	1979	1980	1985
Anchoa	28	21	8
Menidia	16	10	10
Fundulus	39	26	12
Anguilla	6	12	14
Gobiosoma	4	8	7
Pleuronectidae	6	--	1
Brevoortia	2	1	1
Syngnathus	1	1	--
Sciaenidae	6	3	2
Clupeidae	--	10	5
Unidentified	12	18	12
Total	120	110	72

[illegible]
[illegible] SUBCOMMITTEE ON Public Lands, National
Parks and Forests

Dear Chairman Bumpers and Committee Members:

I am Manley Fuller, Executive Vice President of the Florida Wildlife Federation. The Florida Wildlife Federation is one of Florida's largest private conservation education organizations. We are the state affiliate of the National Wildlife Federation, the nation's largest private conservation education organization. Our organization is concerned about the conservation of Florida's natural resources. Among the most critically endangered habitats in Florida are coastal islands and wetlands. HR1983 proposed by Congressman Charles Bennett would establish the Timucuan national preserve in northeastern coastal Florida. The Federation strongly supports their proposed legislation.

The area encompassed by the proposed legislation includes a number of pre-Columbian archealogical sites. The wildlife values of the Timucuan proposal are significant. The preserve provides feeding areas for the Federally endangered wood stork and a host of other rare and endangered animals (see appendix). The Federally threatened indigo snake occurs on the area's uplands. Rare flora occur within the area. Significant recreational use of the area including fishing, camping, boating and hunting occur.

The proposed federal preserve would provide a strengthening of protection for the area's wetlands. Federal wetlands criteria are stronger and more encompassing than state programs. Florida's wetlands are being destroyed at a rapid rate and these coastal wetlands are valuable fish and wildlife habitats. Because of the area's significant historic, recreational, fish, wildlife and environmental values the Florida Wildlife Federation strongly endorses Congressman Bennett's proposed legislation. We support the proposal as written, but would also favor expansions to include Black Hammock Island and also the Nassau county portions of the Nassau river shoreline within the preserve.

I appreciate this opportunity to address the subcommittee and hope that you choose to support this legislation.

Table V

SPECIES OF THE NASSAU RIVER-ST. JOHNS RIVER MARSH AND FT. CLINCH STATE PARK AQUATIC PRESERVE WHICH ARE CLASSIFIED AS ENDANGERED, THREATENED, OR OF SPECIAL CONCERN

ENDANGERED

Reptiles

Atlantic Ridley turtle	(*Lepidochelys kempii*)

Birds

Wood stork	(*Mycteria americana*)
Arctic peregrine falcon	(*Falco peregrinus tundrius*)

Mammals

West Indian manatee	(*Trichechus manatus latirostris*)
Right whale	(*Balaena glacialis*)

THREATENED

Reptiles

Atlantic loggerhead turtle	(*Caretta caretta caretta*)

Birds

Eastern brown pelican	(*Pelecanus occidentalis carolinensis*)
Least tern	(*Sterna antillarum*)
Bald eagle	(*Haliaeetus leucocephalus*)

[illegible]

Florida Natural Areas Inventory [illegible] Florida. 1984 [illegible]

SPECIES OF THE NASSAU RIVER-ST. JOHNS RIVER MARSH AND
FT. CLINCH STATE PARK AQUATIC PRESERVE
WHICH ARE CLASSIFIED AS ENDANGERED, THREATENED, OR OF SPECIAL CONCERN
(continued)

SPECIES OF SPECIAL CONCERN

Birds

American oystercatcher	(*Haematopus palliatus*)
Little blue heron	(*Florida caerulea*)
Reddish egret	(*Dichromanassa rufescens*)
Snowy egret	(*Egretta thula*)
Tricolored or Louisiana heron	(*Egretta tricolor*)

Fish

Atlantic sturgeon	(*Acipenser oxyrhynchus*)

Reptiles

American alligator	(*Alligator mississippiensis*)

Florida Game and Fresh Water Fish Commission. *Rare and Endangered Biota of Florida*. P.C.H. Pritchard, Series Ed., Vol. 1-6. University Presses of Florida, Gainesville, 1978.

Florida Game and Fresh Water Fish Commission. *Endangered and Potentially Endangered Fauna and Flora in Florida*. October, 1984.

Florida Natural Areas Inventory. Tallahassee, Florida. 1984.

FLORIDA WILDLIFE FEDERATION
Affiliated With National Wildlife Federation

STREET ADDRESS: 2545 BLAIRSTONE PINES DRIVE
MAILING ADDRESS: P.O. BOX 6870, TALLAHASSEE, FLORIDA 32314-6870
PHONE: 904-656-7113

MANLEY K. FULLER, III
Executive Vice President

May 29, 1987

Hr 1977

Charles E. Bennett
U. S. Congressman
314 Palmetto Street
Jacksonville, FL 32202

Dear Congressman Bennett:

The Florida Wildlife Federation strongly supports House Bill 1983 to establish the Timucuan Preserve on Fort George Island. The area has outstanding fish and wildlife values, contains rare biotic communities, and offers a valuable area for public recreation including boating, fishing, hunting, swimming and nature study. As you know, the island faces tremendous development pressures and we believe that the island should be publicly acquired and managed as you propose. We think this bill is an excellent legislative proposal and you should be commended for introducing this legislation. We are sending letters to members of the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources in support of HR 1983.

Sincerely,

Manley K. Fuller, III
Manley K. Fuller, III
Executive Vice President

MKF/bke

cc: Mr. Richard Tillis
Mr. Steve O'Hara
Mr. Dennis Bayer
Dr. Larry Harris
Mr. Kim Stanberry
Mr. Jack Stanley
Mr. Jerry Schatz
Ms. Sarah Bailey
Mr. Tim Keyser
Ms. Judy Hancock
Mr. Larry Thompson
Mr. Bernie Yokel
Mr. George Willson
Senator Lawton Chiles
Senator Bob Graham
Florida Congressional Delegation
Mr. Charlie Shaw
Dr. Rudy Rosen
Mr. David White
Ms. Sharon Newsome
Mr. Scott Feirebend

The Florida State University
Tallahassee, Florida 32306-2043

Department of Biological Science

July 29, 1987

Hon. Lawton Chiles and Hon. Robert Graham
Congress of the United States
Senate
Washington, DC 20515

Gentlemen:

I was very pleased to learn that you are co-sponsors of legislation to include Fort George Island in a federally designated wetlands preserve. Beginning in 1983, I have been asked several times by the Florida Department of Community Affairs and the Northeast Florida Regional Planning Council to examine and comment on various of Fairfield-Fort George's plans for development of this island and more generally to consider the biota of the island: what aspects are unique, what threats exist, and what would be appropriate uses of Fort George. My most recent testimony on these points was at a hearing in Tallahassee before the director of the Department of Community Affairs.

In brief, the biotic community of Fort George is unique in north Florida. The vegetation is typical of sites hundreds of miles to the south. There are numerous plants and several animals of special interest, including some that have or should have threatened status. Because the island is so small, and already has sustained some development, the biotic community would be gravely threatened by any substantial development, certainly by development on the scale envisioned in Fairfield's proposals. In particular, the Rollins Sanctuary, an unusual and valuable forest preserve on the island, would certainly be changed by influx of exotic seeds if development were to proceed. The same problems would beset a number of other smaller sites. Furthermore, I am convinced that the hydrological regime that currently supports the forests would be irretrievably damaged were there to be major modification.

For these reasons, I believe Fort George Island is not only suited for designation as a wetlands preserve but that such a designation (or at least some other status mandating minimal further development) is the only means of saving this biological resource. Therefore I strongly support your proposal. It is heartening to find support for such worthy environmental goals among Florida's congressional delegation.

Sincerely yours,

Daniel Simberloff
Robert O. Lawton Distinguished Professor

DS:cgg

cc: Hon. Dale Bumpers
Hon. Charles E. Bennett

FRIENDS OF FORT GEORGE ISLAND, INC.
Post Office Box 371
Jacksonville, Florida 32201
Telephone: (904) 389-1383

Sept 29, 1987

TO: Subcommittee on Public Lands

I am pleased to have the opportunity to testify before the House Interior Subcommittee on Public Lands. I am spokesman for and representative of The Friends of Fort George Island, Inc. The Friends purpose is the preservation, conservation and restoration of Fort George Island and surrounding environs. Our members are island residents and interested citizens. Personally, I have owned property on the island for over 40 years and I have a home there. I have been very familiar with Fort George Island for over 60 years.

We are strongly in favor of including all of Fort George Island and the surrounding salt marsh and waters in the "Timucuan Ecological and Historic Preserve" as described in Bill H.R. 1983.

We feel that including all of the island in this preserve will increase the protection which is very necessary to its future.

Fort George Island is approximately 950 acres of uplands bordered by 2,500 acres of tidal salt marshes. Until the late 1800s Fort George Island was a barrier ocean front island. Little Talbot Island crept southward and is a narrow island now located between the ocean and Fort George Island thus making Fort George Island a secondary barrier island with all of the characteristics of a barrier island. (See 1824 map and 1853 chart showing ocean frontage, and an up to date map. All marked Exhibit A.)

The U.S. Department of Interior has recommended that Fort George Island be added to the Talbot Barrier Island complex in the Coastal Barrier Resources System. (Letters attached Exhibit B)

Fort George Island is rich in history with happenings known to begin as much as 1,500 years ago when Indians began living there. Ancient Indian mounds still exist in many areas on the island and almost everywhere you dig a shallow hole artifacts can be found. Attached are two detailed histories of the island. One is written by S. G. W. Benjamin for Atlantic Monthly in 1887 (Exhibit C) and the other is from an unknown source (Exhibit D).

There are wildlife and birds which need protection. The wood stork and the indigo bunting, and gopher tortoise and the indigo snake are a few.

Plant life is important on this heavily forrested island. Orchids and ferns and other rare plants thrive due to favorable micro-climate and oyster shell middens. These also need protection.

Fort George Island is a unique island and holds tremendous amounts of history and incomparable beauty and we feel that all of it should be included in this preserve.

Thank you for your interest.

FRIENDS OF FORT GEORGE ISLAND, INC.

By
William E. Arnold, Jr.
Vice President and Spokesman

Enclosures:

Exhibit A - Maps dated 1824, 1853, 1986
Exhibit B - Barrier Island Letters
Exhibit C - 1887 History
Exhibit D - History

(Sketch F No. 2)

U.S. COAST SURVEY

A.D. BACHE, Supdt.

PRELIMINARY CHART
OF THE
ENTRANCE TO ST. JOHN'S RIVER
FLORIDA

Triangulation by G. A. FAIRFIELD, Sub-Asst.

Topography by R. M. BACHE, Sub-Asst.

Hydrography by the Party under the command of Lieut. T. A. CRAVEN, U.S.N. Assistant

Scale [illegible]

1853

Verified
H. W. Benham, Capt. of Engrs.
Asst. in charge of Office.

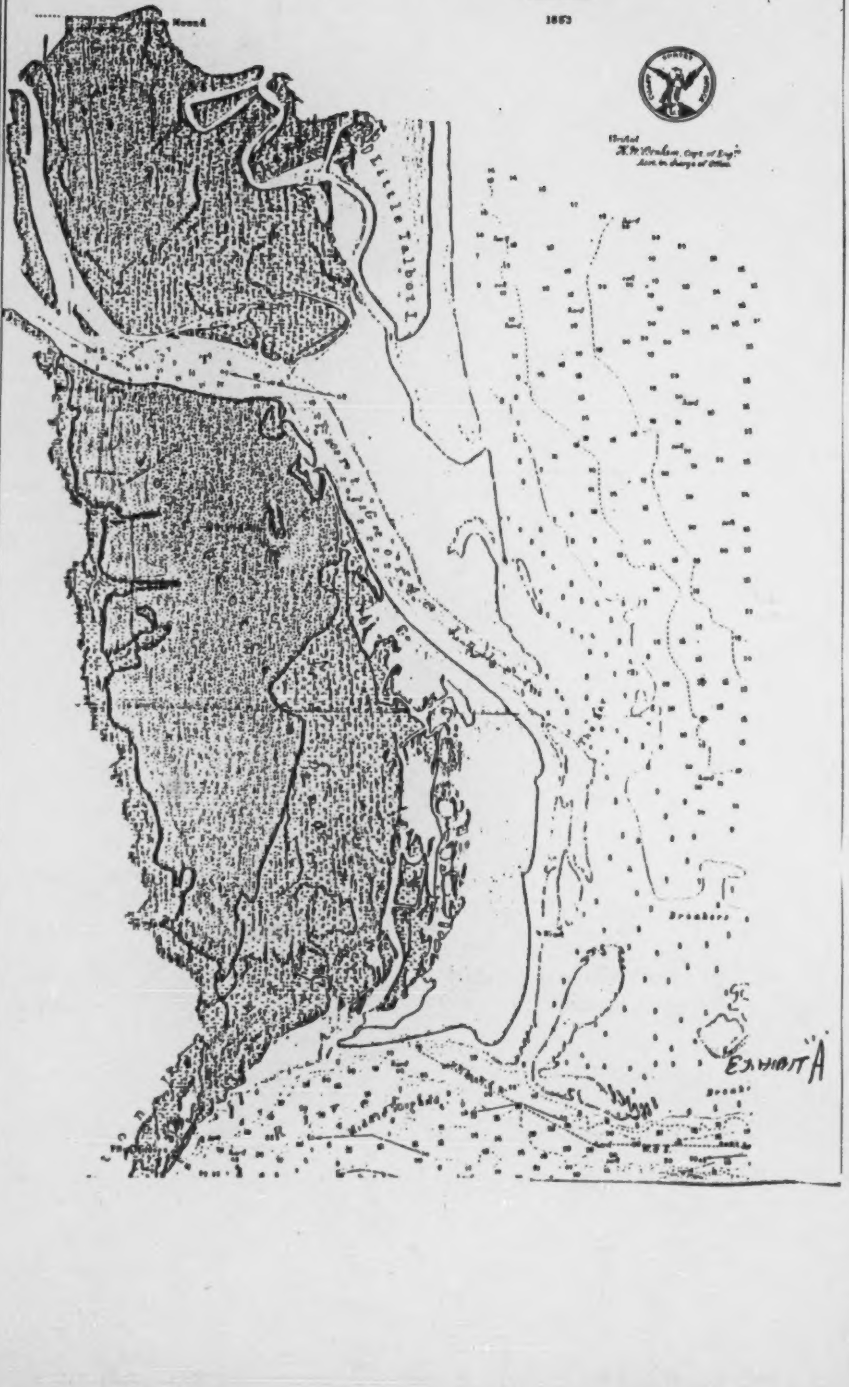
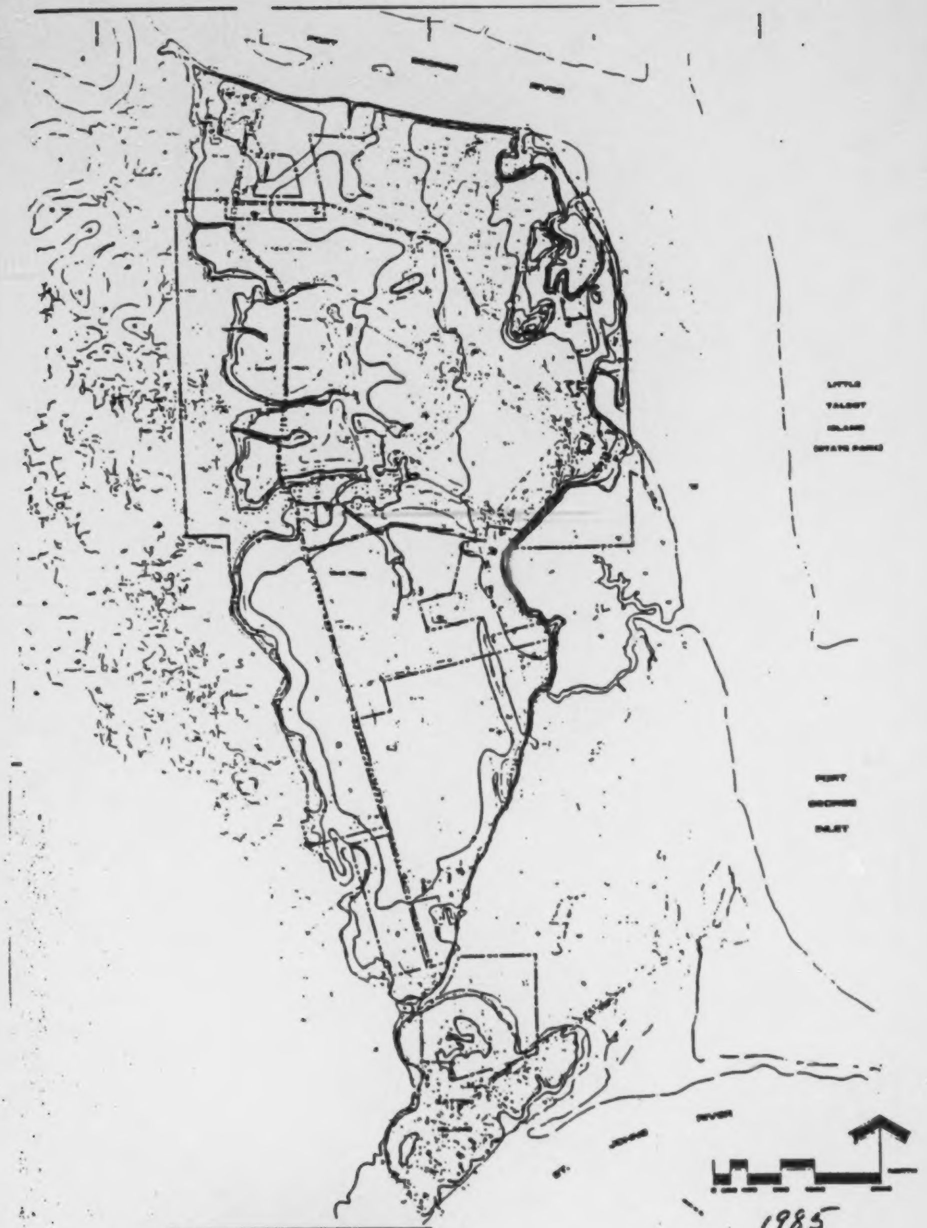

Mound
Little Talbot I.
Breakers
Breakers

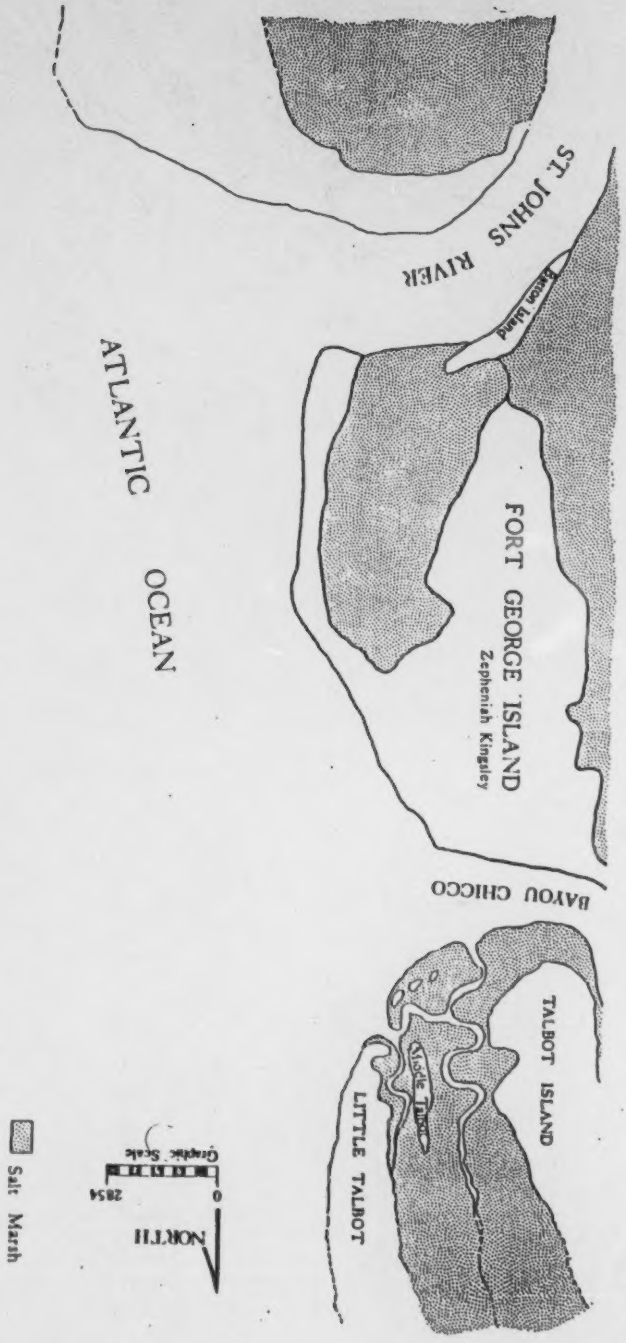
EXHIBIT "A"


LITTLE
TALBOT
ISLAND
(STATE PARK)
FORT
GEORGE
INLET
JOHNS
RIVER

Fort George Island
FLORIDA

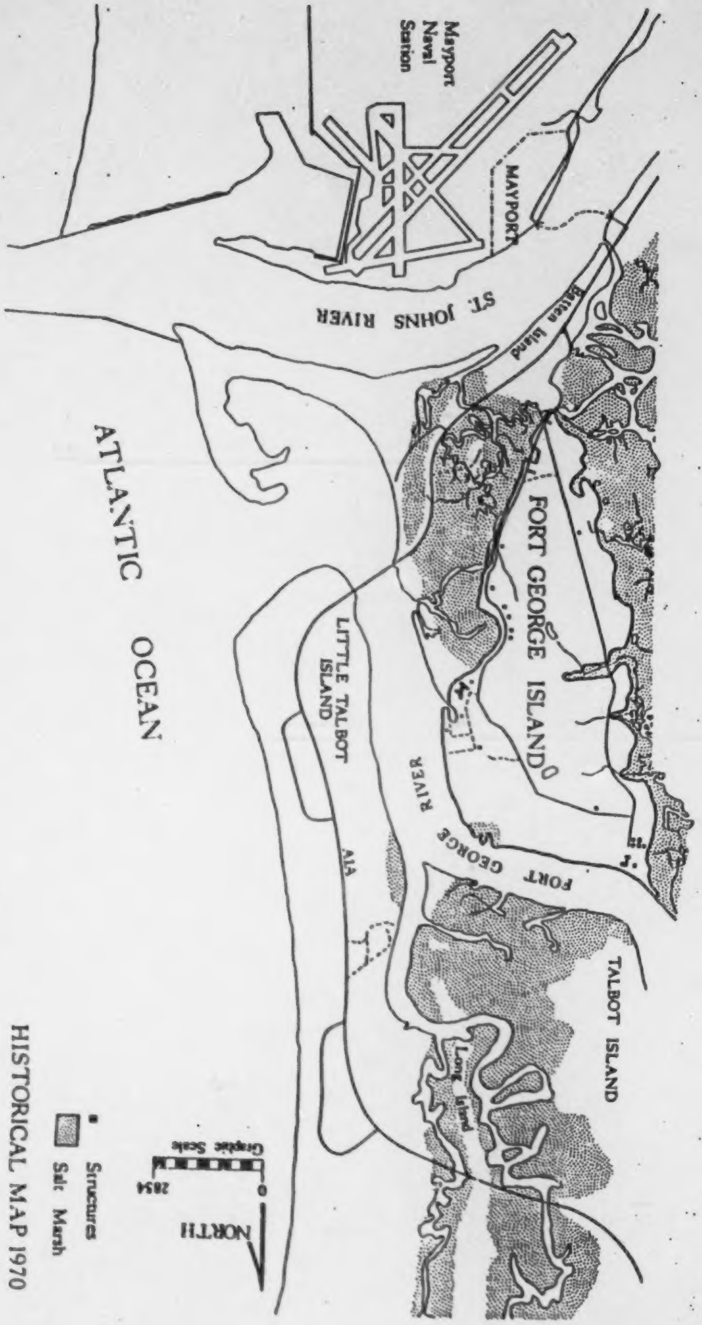
1985

EXHIBIT "A"


ST. JOHNS RIVER
Batton Island
ATLANTIC OCEAN
FORT GEORGE ISLAND
Zepheniah Kingsley
BAYOU CHICCO
TALBOT ISLAND
Little Talbot
LITTLE TALBOT
NORTH
0
2854
Graphic Scale
Salt Marsh

HISTORICAL MAP 1824

EXHIBIT "A"


Mayport Naval Station
MAYPORT
ST. JOHNS RIVER
Batten Island
ATLANTIC OCEAN
FORT GEORGE ISLAND
LITTLE TALBOT ISLAND
FORT GEORGE RIVER
A1A
TALBOT ISLAND
Long Island
NORTH
0
2854
Graphic Scale
Structures
Salt Marsh

HISTORICAL MAP 1970

EXHIBIT "A"

THIS LETTER SENT TO:
GV. MARTINEZ
REPS. BENNETT AND CHAPPELL
SENATORS GRAHAM AND CHILES
and to the Dept. of the Interior,
Wash.,D.C.

May 1, 1987

Subject: Proposed Addition of Jacksonville Florida's Fort George Island to the Federal Government's list of Fragile Coastal Areas they consider Ill-suited for Development.

Dear Sir:

We strongly urge you to support the U.S.Government Department of Interior's above Subject Proposal.

Our families have lived in the Fort George area for over one hundred and fifty years. We have personally witnessed the deterioration of nature's shoreline protection afforded by this Barrier Island due to Developer's activities.

Gone are the wild horses, ospreys, eagles, panthers, and small game that inhabited the island, replaced by poisonous run-offs brought in to fertilize, etc.
Even without hurricans or bad N.E. storms, some of the roads are under water at high tides, especially at full moon, demonstrating its value in holding back flood waters.
Again, we hope you will support the Subject Proposal.

Sincerely yours,

Guy W. Sackett, Jr.
Retired Licensed Professional
Engineer and Land Surveyor

Evelyn Sackett Hogan
Retired School Teacher

Guy W. Sackett, Jr.
10110 Heckscher Dr. Box 153
Tel.(904) 251-3269
Ft. George Isle, FL 32226

EXHIBIT B

WILLIAM M. BLISS CONSULTANT, INC.
2227 HERSCHEL STREET
JACKSONVILLE, FLORIDA 32204
TELEPHONE (904) 384-4300

William M. Bliss, E.A., M.S.P.A.
Thomas M. Bliss, President

William M. Bliss, Jr., Vice President
Lewis C. Bliss, Marketing

April 28, 1987

U S Representative Charles E. Bennett
2107 Rayburn House Office Building
Washington, D.C. 20515

Dear Charlie:

Recent articles in local papers have mentioned that the U.S. Department of the Interior is recommending that Fort George Island and its salt water marshes be made a part of the Talbot Island Complex in the Coastal Barrier Resources System.

Scrap's family have owned property on Fort George Island for over 60 years and we still own property there. Her grandmother owned a home there for many years, long before the island was accessable by road. To reach it they drove to Mayport, used a rowboat to cross the St. Johns river and a horse-drawn carriage to her house.

The island has remained relatively undeveloped and is rich in wildlife, rare plants and early Florida history. We are opposed to inappropriate over-development and would much prefer that it be added to the Tablot Island Complex in the Coastal Barrier Resources System.

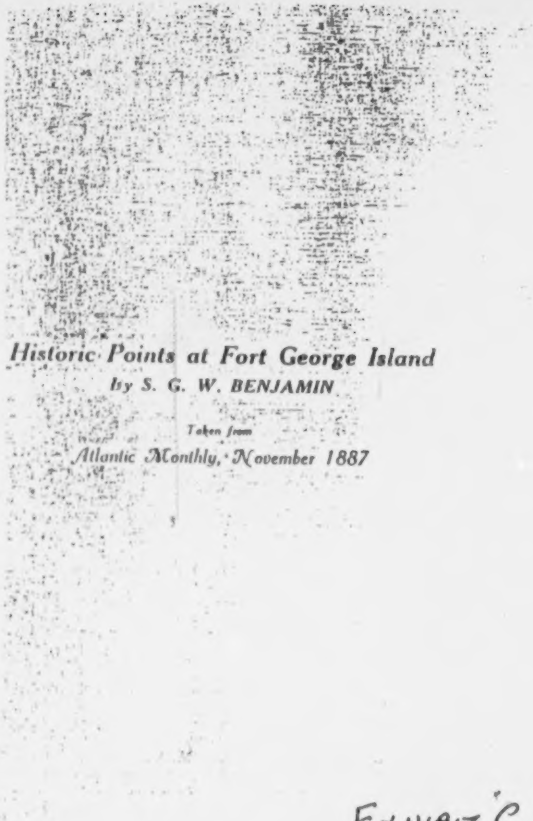
I hope that we can count on your support.

Cordially,

Bill

William M. Bliss
1849 Mallory Street
Jacksonville, Florida 32205

EXHIBIT "B"



Historic Points at Fort George Island

by S. G. W. BENJAMIN

Taken from
Atlantic Monthly, November 1887

EXHIBIT C

Historic Points at Fort George Island

THE charms of Fort George Island, at the mouth of the St. John's River, Florida, are widely and justly celebrated. But the enraptured visitor, lingering under its lithe groves of palm, little dreams of the scenes of romance and blood which half a century before the Pilgrims landed at Plymouth enriched this magical isle with the element of association and legend.

It is with these events that we are now chiefly concerned, with a view to a more exact knowledge of the spot where they occurred than has yet been reached by those who have hitherto written on this subject as historians, giving either dramatic condensations of the facts, like Parkman, or running commentaries on the old records, like Shea.

After the first landing of De Soto in Florida in 1529, no systematic attempt occurred to establish a colony in that peninsula until Jean Ribaut, the Huguenot admiral, anchored off the mouth of the St. Johns River, May 1, 1562, and called it the River of May, owing to the season and the amenity of the prospect. The establishment of a French Protestant colony in Florida resulted in stimulating the hate and jealousy of the Spaniards, for, as Parkman pithily observes, "the typical Spaniard of the sixteenth century was not in strictness a fanatic; he was bigotry incarnate." A powerful expedition, under Pedro Menendez de Aviles, Adelantado of Florida, was launched against the Huguenot colony. Headed off from the River of May by the fleet of Ribaut, Menendes, on the 8th of September, 1565, took possession of a port at the southward, and founded St. Augustine, the oldest town in the United States.

Providence certainly seemed to fight agains tthe Huguenots in Florida, for they never gained a permanent foothold there. The fleet of Ribaut was shattered by a terrible tempest, and driven on the sands near St. Augustine. Taking advantage of their distress, although France and Spain were then at peace, Menendez, by the practice of phenomenal dissimulation and treachery in the name of religion, which has been the cloak for so many foul deeds, succeeded in seizing the French Fort Caroline and every French man and women in Florida, excepting some fifteen who escaped to the Indians. He butchered nearly all his prisoners, to the number of seven hundred, in cold blood, reserving a few for the galleys. This episode forms one of the bloodiest pages in the gory annals of Spain.

Owing to the bitterness of the religious feuds of the age, the extermination of the French in Florida seems to have aroused but little indignation at the court of France; for in those dark days religious bigotry counted for more than patriotism in the councils of the nations. Notwithstanding this fact, a few were found in France, besides the Huguenots, whose blood boiled when they learned of the massacres of their countrymen in Florida. Among them was Dominique de Gourgues, a seaman and soldier, known for daring and adventure. Amidst a conflict of authorities, I prefer to accept the statement of Charlevoix that he was a Roman Catholic. But he never forgot that he was first of all a Frenchman. When De Gourgues heard of the horrible deeds of Menendez he resolved on vengeance, and to that end obtained a commission from Montluc, lieutenant of the king in Guyenne, ostensibly to procure slaves on the coast of Africa. Mortgaging all his possessions, De Gourgues purchased and fitted out three small vessels. Two were of the style called roberges; the third was a patache, a [illegible] whose rig resembled that of a felucca,—that is, with lateen sails and low masts. Very likely she was also broad in the beam and of light draught to meet the special purpose of the expedition. All three vessels were provided with sweeps, which proved very useful, as we shall see, in the case of the patache, in the tortuous channels of the sea islands of Florida. This little squadron was manned by eighty picked mariners and one hundred and fifty troops, of whom one hundred, according to De Gourgues, were heavily armed arquebusiers.

It was not until after he had made several descents on the African coast [illegible] De Gourgues announced to his [illegible] what was the real purpose for which he had undertaken this voyage. "J'ai compte sur vous, je vous ai cru assez jaloux de la gloire de votre Patrie, pour lui sacrificer jusq'a votre vie en une occasion de cette importance; me suis je trompe?" 1) Such in substance was the ringing address of De Gourgues to his companions. For a moment, grouped around the masts, while naught was heard but the wind in the sails and the foam at the bow, they made no response to these burning words. Then, like an electric spark, the glory of the opportunity, the rage for revenge, the fury of patriotism, kindled their hearts; with a universal shout, they besought the admiral to make a straight wake for the stronghold of the Spanish cutthroats and brigands, who had slaughtered their countrymen and ravished fortresses from France in time of peace.

It was a rosy afternoon in the early spring-time when the three French ships made the land at the mouth of the River of May. The Spaniards, far from suspecting them to be French, fired a salute as the little fleet sheered off and stood northward to find a congenial haven in the St. Mary's River. I use the word "congenial" advisedly. The Indians had, as usual, been treated with the treachery and brutality which everywhere characterized the Spanish conquest in America. The French and the Indians, on the other hand, had associated as harmoniously in Florida as in Canada. The head chief, Satourioua, and his dusky subjects were overjoyed to see the banners of France again, and entered into the plans of De Gourgues with the utmost heartiness. Spies, sent to examine the number and works of the Spaniards on the River of May, reported that they numbered upwards of four hundred men and had two new forts besides Fort Caroline, which the Spaniards had renamed Fort San Mateo. The new forts were situated on either side of the mouth of the river, evidently to command the passage.

In three days Satourina and his warriors completed their preparations to accompany De Gourgues against the Spaniards. Francois Bordelais was left with twenty men to guard

1) Charlevoix.

the two largest of the ships. The third, which was doubtless the patache, we must conclude from the tenor of the narrative, accompanied the expedition; for a craft capable of transporting eighty men is mentioned in connection with the capture of the second fort. Where did the French find such a vessel, unless it was the patache?—while the boats of the squadron could not have been large enough or sufficiently numerous to transport the two hundred and ten Frenchmen who went to Fort George Island with De Gourgues. Part went in boats, and part in the patache, expressly provided with sweeps,—a vessel having low masts, visible only at a short distance, and spars lowering to the deck. Evidently De Gourgues selected a patache for exactly this sort of service in Floridian waters.

The Indians proceeding by land or in canoes, the French by boats and in the patache, De Gourgues finally succeeded, after much buffeting with angry waves and winds, in assembling his motley forces on what is now called Fort George Island. Still densely wooded in most parts with gigantic oaks and stately palms, at that time it presented a tangled jungle, excessively difficult to penetrate. All the afternoon they toiled with the closely matted underwood and swollen streams and pools. Had they been discovered by the enemy, their destruction would have been certain. Towards nightfall De Gourgues arrived on the banks of an arm of the sea,—undoubtedly what was once called Fort George Inlet, but now known as Talbot Inlet,—and continued the march along the sands, which are smooth and hard as a floor.

The following day, having been detained on the bank of another stream or inlet by the tide, the impatient French and Indians, burning with a thirst for revenge, and urgent to terminate the perilous suspense, took the Spaniards unawares after their noon meal, swept over the fort like a hurricane, and massacred the garrison of sixty to a man, those who escaped from the fort falling into an ambuscade of Indians.

The Spaniards at the fort on the opposite bank of the River of May, seeing and hearing the commotion, opened fire on the victors. De Gourgues caused four culverins, just captured, to be wheeled down to the shore, and under cover of this return fire embarked eighty of his soldiers in the large craft we judge to have been the patache, and pushed across to the opposite fort; the Indians, holding their bows and arrows in one hand over their heads, and swimming with the other, accompanied the patache. Smitten with terror, and well aware they had nothing to hope from the furious multitude swarming across the river the Spaniards flew pell-mell towards the forests, but were too late: for De Gourgues was already landing. A cloud of French and Indians, fierce as bloodhounds after fugitive slaves, threw themselves in the path of the flying wretches, and all but fifteen fell under the arquebuse and the tomahawk.

Fort San Mateo remained. Being but two miles and a half from the scene of these events, the garrison had the whole Quasimodo Sunday to reflect on the fate that awaited them in turn, while French and Indians were engaged making ladders to storm the stronghold of the bluff. By the aid of boldness and stategy, Fort San Mateo was also captured, and the entire garrison was butchered, save the governor, Gonzalo de Villaroel, and two or three companions, who escaped, and a handful of prisoners, reserved for more deliberate vengeance.

The three conflicts being victoriously concluded, and the three forts captured, De Gourgues ordered the captives to be dragged into his presence. His judgment hall was under the spreading oaks, pointed out to him as those on which Menendez had hanged the Frenchmen, with the inscription over them, "Not as to Frenchmen, but as to Lutherans." As he surveyed the trembling wretches before him, we can imagine that if ever there is a rapture and a luxury in dealing out revenge, De Gourgues reveled in it then, as he looked down on them with terrible gaze. "Think you," he cried, "that a treachery so vile, a cruelty so abominable, could escape retribution. I, one of the humblest squires of my sovereign, have taken on myself to avenge this crime against a king so puissant and a nation so chivalrous... Although it is not possible to deal to you the full measure of suffering you have so richly earned, it is needful you undergo what a foe may inflict with honor, to the end that by your example others may learn to respect the peace and amity which you have so wickedly and unhappily violated!" Then, with a wave of his hand, the avenger of France bade the executioners do their work. On the branches where the Spaniards were hanged De Gourgues caused the inscription to be fixed, "Not as to Spaniards or Moorish whelps but as to traitors, thieves, and assassins." Thus did the heroic Dominique Gourgues literally exterminate the Spaniards from the River of May, and replace their banner of blood and gold with lilies of France.

With his subsequent career we are not here concerned. My purpose in giving this rapid sketch of these thrilling events has been in order to enable the reader to follow me more readily in the consideration of certain points to which my interest in the subject has led me to give critical attention.

It is not difficult to trace the position of Fort San Mateo, for relics of that fortification, mounds and the like, yet remain there, although Parkman, on the authority of De Gourgues, states that by the command of De Gourgues "not one stone was left on another." Of the two other forts, unfortunately, no traces are now to be seen; but the one on the southern bank in all likelihood stood on the dunes near the building until recently occupied in summer as a nunnery.

The position of the first fort attacked, the one on the northern side of the river, is not so easy to ascertain, having, indeed, been long a matter of curious speculation. This may be in part because those who have written upon this subject have not visited the scene of these events, while those who have been there, and are familiar with the region, have failed to study the records with sufficient care. By some it has been assumed that this fort stood a few rods northeast of the hotel, on a bank overgrown with palmettos that overhangs the beach skirting Talbot Inlet, at the entrance to what is called Lover's Lane. It has been claimed that here would have been the most eligible spot to command the passage through the Inlet. But to accept this solution of the question would be to ignore not only the direct statements of De Gourgues, an eye-witness, of Charlevoix,

and other chroniclers, but also the physical aspects of the situation.

A small fort, garrisoned by only sixty men, would have been in a most exposed position, if isolated from and unsupported by the other two forts; whereas by being further south and west it could at once command the inlet, and with the aid of the Mayport battery control the main ship-channel into the River of May. The narrative states that the French, after landing on the island, pushed through the forest until, at five in the afternoon, they came to a wide inlet, presumably Talbot Inlet. The account of De Gourgues leaves one to understand that they were then still considerably north of the Spanish Fort, for they marched along the sands, which run as nearly as possible north and south on the east side of the island as far as the southern entrance of Talbot Inlet. As the French are stated to have marched down the beach, and as there is no beach on the other side of the island, clearly the road followed was along Talbot Inlet. This route was suggested by one of the Indian chiefs, who perceived the great difficulty the French found in traversing the dense undergrowth of the primeval forests.

We are now brought face to face with the chief point of interest in this investigation: where stood the Spanish fort on Fort George Island? In considering the unvarnished statements of eye-witnesses or credible historians on this subject, we may justly conclude that the spot which enables us most clearly to harmonise the facts as recorded must evidently be, in all likelihood, the position where the fort stood, without regard to any supposed expediency in favor of some other site: first, the attacking party marched, as we have seen, along the beach until in sight of the fort, and was then arrested in its progress by a stream or inlet until, the tide falling, the depth was reduced to a degree that allowed them to ford it; second, the fort was partially concealed by trees in the rear, which enabled the Indians, approaching from the interior of the island, to form an ambush; third, it faced the beach, to the edge of which the victors wheeled the captured cannon, and were thence able to annoy the enemy on the opposite side of the river, at short range, suited to the small guns of the period; fourth, we are distinctly told that the enemy were able to see the commotion from the opposite fort; and fifth, from this point, or not far from it, the Indians swam across to Mayport, which many of them could not have done except at a narrow part of the river.

Such are the points to harmonise in searching for the site of the Spanish fort on Fort George Island. 'That it was on that island is indicated, in addition to the above points to be hereinafter considered, by the fact that the French followed the channels from the north, and proceeded by water until they were stopped by an island on which stood the fort.' Naturally, therefore, they landed at the northern extremity of Fort George Island, about where the present "Homestead" mansion stands, amid its stately groves of oak festooned with Spanish moss. The fine roads, unsurpassed for attractiveness, which now make it so easy and agreeable to ramble or ride over the island, did not then exist; it was a dense, stubborn wilderness, excessively difficult for heavily armed troops to penetrate impeded as they were with baggage and weighty arquebuses, breastplates and helmets, while the circumstances rendered rapidity of the last importance. Therefore, after toiling awhile in the forest, the French turned to the left and took to the beach, which is hard and for the most part was scarcely discernible from Mayport, in days before the spyglass had been invented. Still, in the last portion of the march, the movement of dark masses might have been perceived from the high dunes of Mayport, and therefore, De Gourgues very likely marched his men single file crouching close under the bank, tufted with palmetto. This necessitated more deliberate movement, and partly accounts for the length of time occupied in arriving within sight of the fort.

Along the southeastern extremity of Fort George Island there stretches a long, wide sand-pit, flanked upon the land side by knolls, rising both above the beach and the salt meadows, which are covered with long grasses and clumps of verdure. On one of these knolls was, in my opinion, the spot where the fort stood. A broad, winding creek separates the beach from these wooded hillocks. This is in all probability the water which delayed the attack of the French. The tide rises there from four to six feet, and to swim the creek would have been highly inexpedient, under the circumstances. But at low tide the creek is barely fordable, and it was then crossed by the daring adventurers wading up to their necks, holding their pikes and arquebuses over their heads, and the powder-flasks bound to their helmets.

From the beach, at the point, where we consider the fort to have been, the distance to the opposite shore is precisely five-eighths of a mile. This distance is quite within range of the culverine, which at any rate would have been able to prevent any reinforcements coming to the aid of the Spaniards or to attack the patache, which, following the channel along Talbot Inlet, evidently arrived at the scene of action about this time. Again, by running a few rods southwest of that point, the Indians would have had actually less than half a mile to swim from bank to bank—a distance easy of accomplishment for athletes like those naked, copper-colored savages, especially if the tide was coming in, which we are led to infer was the case, as the creek was crossed at extreme low tide, when it was on the turn.

The facts that the short-range guns of the time were available from Mayport to annoy the French across the river, and that the Indians swam to the southern bank, are to me conclusive that the fort stood either on one of the hummocks already mentioned, west of the beach and the creek, or at the spot where Pilot Town now stands, as indicated on the charts. But that it was not at the latter place seems, on the other hand, to be proved by the proximity of the fort to the creek. All the essentials to connect the site of the fort with the narrative are, in my opinion, found combined at the place I have indicated above. Shea somewhat skeptically says, "Is it creditable that De Gourgues' cannon and the artillery of the second Spanish fort kept up a duel across the mouth of the St. Johns, and the Indians swam it?" To this I respectfully reply that if we locate the site of the first fort in accordance with the foregoing observations and conclusions, these statements are not only credible, but certain. Indeed, I cannot see for a moment how a careful examination of the scene of these

events could result otherwise than in confirming the narrative of the old chroniclers.

Another argument, more hypothetical than those already adduced, but still worthy of attention as adding cumulative force to our objections to the location of the fort at Pilot Town, is found in the name of Fort George Island. Pilot Town is just beyond it; not on the island at all, but separated from it by a narrow creek,—so narrow, in fact, that it could not have been the creek mentioned by the historians. Now, what is the source from which Fort George Island derived its name? The descendants of Mr. Mackintosh, who came to the island from Scotland about a century ago, claim that he gave it the name as a reminder of his home in the mother country. But in an old map illustrating General Oglethorpe's expedition against St. Augustine, we find the island already called Fort George many years earlier. This seems to indicate either that the Spaniards gave that name to their fort, whence it was applied to the island, or that the present name is a corruption of the word Gourgues. Such changes in the pronunciation of proper names we all know to be excessively common. The inference is obvious as to the position of the fort.

The daring and romantic exploit of Dominique de Gourgues is of such heroic character, and so imperishable in the annals of our colonial period, that we offer no apology for attempting to add fresh clues towards the settlement of vexed points in the narrative of the vengeance he wreaked on the Spaniards in Florida.

Before closing, however, it may be worth while to call attention in this connection to another point relating to Fort George Island. The Indians, according to Charlevoix, asserted that the silver abounded in the mountains along the St. Johns River. Shea, who apparently had never been to the St. Johns River when he prepared his notes on this subject, states in a footnote, that these mountains were what is now known as St. Johns Bluff, which is forty feet high, and the site of Fort San Mateo. Is it not far more likely that these mountains are represented by Mount Cornelia, on Fort George Island, the highest land between the Navesink Highland and Key West, and more than twice the altitude of St. Johns Bluff? What if silver should indeed be discovered in Fort George Island?

S. G. W. BENJAMIN.

ISLAND HISTORY

Lying safely behind a protecting seaward island is the thousand-acre Fort George Island, the St. Johns River at its mouth. Its peaceful beauty today belies its tempestuous past. Happily that beauty reflects other times, too, times when the island earned the name, "Sweet Land by the Sea."

The happenings which have swept across the island began with the pre-historic Indians who lived briefly on the island as much as 1500 years ago. Their counterparts, known first to the Europeans, were the majestic Timucua whose likenesses we admire in the works of the French artist, LeMoyne, the first to draw the Indians in North America.

Sounds of fury echoed over the island when the French and the Spanish struggled for control of Florida in 1565. But harsh incidents were forgotten with the establishment of the Spanish Mission, San Juan del Puerto in 1587. Father Francisco Pareja left a record of the Indians and their lives as did Quaker missionary, Jonathan Dickinson, who visited there a century later.

The rivalry between nations for the control of North America reached again to Fort George Island when, in 1702, British colonists bore down from the north and destroyed the Florida missions. Three decades would pass before James Oglethorpe founded Georgia and invaded Florida. On his way south he named Amelia and the Talbots and St. George's Island, building a nearby island, Fort St. George. Oglethorpe was forced to withdraw, but England gained possession of Florida 1763.

With this change of ownership of Florida the plantation era of development began on Fort George Island. John Bartram, the famous Philadelphia botanist, visited Mr. Hazard there, describing him as one of the best planters in Florida, and the island a large and rich one.

Florida was retroceded to Spain in 1783 and the island was soon granted to John McQueen, a friend of Washington and Lafayette, now a Florida resident. McQueen enlarged the plantation, growing an extensive cotton crop as well as the usual food crops. Here in a comfortable home he entertained travelers to and from St. Augustine. And as a Spanish officer he endeavored to keep peace along the river. He gave a place of refuge to women and children fleeing raiding parties of Indians and rebels who swooped down from Georgia in efforts to wrest Florida from Spain.

A new master of the island, John Houstoun McIntosh, bought the island in 1804, made advances in the develop of the plantation, but did not add to peaceful times for h the leader of the East Florida Republic, an organi inspired by the President of the United States to achiev delivery of Florida into American hands.

The last of three Scotsmen to own Fort George Island, Zephaniah Kingsley who bought the island in 1817 McIntosh when he was forced by the Spaniards to flee to Georgia home. Under Kingsley virtually all tillable land on island was utilized. He was an enterprising businessman trader as well as planter and he brought the island to peak of success. Following his death in 1843, his nep Kingsley Beatty Gibbs, managed the property until disruption brought about by the Civil War.

EXHIBIT "D"

June 30, 1987

Honorable Bruce Vento
Chairman
House Subcommittee on National Parks and
Public Lands
House Annex I, Room A812
Washington, D.C. 20515

Dear Bruce:

Attached you will find a letter and petition initiated by Mr. William E. Arnold, the vice president of the Friends of Fort George Island, Inc. As Mr. Arnold points out in his letter, the petition submitted by Fairfield Communities, Inc. against the inclusion of Ft. George Island in the Timucuan Ecological and Historic Preserve consists of a total of only 6 residents and/or property owners on the island. The petition that Mr. Arnold is submitting in support of Fort George Island's inclusion in the Preserve consists of signatures from 23 Fort George Island residents and property owners. A petition such as this presents a very strong case for the proposed Timucuan Preserve to include Fort George Island, and I therefore submit this petition for the record.

Thank you for all of your help in this matter and your efforts to move this bill quickly.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB:mp

June 23, 1987

FRIENDS OF FORT GEORGE ISLAND, INC.
Post Office Box 371
Jacksonville, Florida 32201
Phone: 904/389-1383

To Whom It May Concern:

The petition which was submitted by Fairfield Communities, Inc. includes only four residents and two property owners on Fort George Island.

It appears that their effort to obtain about 50 signatories on this petition was accomplished by having all members of families and their in-laws sign the petition. In an effort to disguise this, the family signatures were scattered among the other names. Several who signed live in the same house.

This petition does not come close to a majority of residents and property owners on Fort George Island.

Friends of Fort George Island, Inc.

By: ______________________
William E. Arnold, Jr.,
Vice President and Spokesman

PETITION

June 2-, 1987

The undersigned property owners and or residents on Fort George Island do hereby petition to include all of Fort George Island in the "Timucuan Ecological and Historic Preserve" as described in Bill H.R. 1983.

We believe that it is necessary to protect the historic sites, plantlife, wildlife, surrounding salt water marshes and waters on and around the Island. Inclusion of all of Fort George Island in this bill (H.R. 1983) would accomplish this.

Signature	Print Name and Property Description
1 Doris B Chappelle	Doris B Chappelle - Lot 4 (ex) Sec. 18, T.1S., R.29E and 5 acres Lot 50 Re: 169233-0000
2. Leo E Chappelle	LEO E. AND DOROTHY A. CHAPPELLE 13.23 ACRES MORE OR LESS OF LOT 507
3. Dorothy A. Chappelle	
4 Jr.	WILLIAM E. ARNOLD, JR. LOTS 6,7,8,9 RIBAULT CORP. PROPERTIES SEC. A, P.B. 13-76
5. Carolyn W. Hogan	Three Acres of Lot 515 . Hogan and Sackett are beneficiaries of Trust Fund held by American National Bank of Jacksonville, Florida
6. Guy W. Sackett, Jr.	
7 Nancy E Lutz	Nancy E Lutz Lots 2, 3, 8, 9, Block D. Ft. George Corp Replat, P.B. 14-43
8. Geraldine Leigh	Geraldine Leigh Parcel #23 Part of Lot 513, subdivision of Fort George Island as recorded in Deed Book AM page 377 lying in Kingsley grant Section 3 Township 1 South, Range 29 East
9 Rodney D. Ayal	Pt. of Lot 510, Ft. George Island PLAT AM-378 RE: 169230-0100
10 Mrs. A. C. Williams	Pt. of Lot 3, Sec. 18, T 1 S, R. 29E and Part Lot 510, Ft. George Island Plat. AM-378 RE: 168192-0030 & 169228-2020

PETITION

June 2-, 1987

Page____

	Signature	Print Name and Property Description
		James and Evelyn Lucas
11.	Evelyn F. Lucas	LOTS 60 & 61, FORT GEORGE
12.	James W. Lucas	ISLAND, PLAT- AM-378,
		RE-169227-0000
		Helen Oliver
13.	Helen Oliver	Pt. of lot 5 13 Plat AM 378
14.	Susan R. Baldwin	Lots 9 & 10 Block O Ft. George
		Island PB 14-4
15		LOTS 2+3 BLOCK O FT
		GEORGE CORP REPLAT
		P.B. 14-43
16 ✓		LOT 4, RIBAULT CORP. PROP.
		SEC. A, P.B. 13-76
17 ✓	William M. Blum	Lots 1 & 16 Block B Fort George
		Corp Replat, P.B. 14-43
18 ✓	Camillus S. L'Engle, Jr.	LOTS 6 and 7, Block A FORT GEORGE
		CORPS REPLAT P.B. 14-43.
19 ✓	Dr. and Mrs W. J. Keenan	Lots 18, 19, 20, 21, Ribault Corp
		Properties - Sec. A, P.B. 13-76
20		Lot 5, Ribault Corp Properties Sec A PB
21		Lot 9, Blk A, Ft. George Corps
22	Edward H. Owens Jr.	PART OF LOT 3 SEC. 15 T1S R29E. AND PART OF LOT 5C5, FT. GEO. ISLAND, PLAT AM-378

PETITION
June 24, 1987

Page____

Signature	Print Name and Property Description
23. Lilla C. Denman Resident 16 yrs	LILLA C DENMAN DO NOT HOLD TITLE TO ANY LAND
address: 10942 E. Ft. George Rd.	

PETITION

June 24, 1987

The undersigned property owners and/or residents on Fort George Island do hereby petition to include all of Fort George Island in the "Timucuan Ecological and Historic Preserve" as described in Bill H.R. 1983.

We believe that it is necessary to protect the historic sites, plantlife, wildlife, surrounding salt water marshes and waters on and around the Island. Inclusion of all of Fort George Island in this bill (H.R. 1983) would accomplish this.

Signature	Print Name and Property Description
Nancy J. O'Donnell	Pt. of Lot 510, Ft. George Island
	Plat AM-378 Re: 169230-038

CHARLES E. BENNETT
MEMBER
3RD DISTRICT FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE

MERCHANT MARINE AND FISHERIES
COMMITTEE

CHAIRMAN OF FLORIDA CONGRESSIONAL
DELEGATION

File Copy

Congress of the United States
House of Representatives
Washington, DC 20515

RAMON L. DAY
ADMINISTRATIVE ASSISTANT
JODY H. MOONEY
LEGISLATIVE ASSISTANT
SHARON H. SIEGEL
BARBARA L. PETHEROLF
CARLA E. SMALLWOOD
RUSSELL W. HOUSTON
ETHEL M. SCHISSELL
MIRIAM E.A. WOLFF
SALLY A. GARRETT
GREGORY M. WILLIAMS
STAFF

WASHINGTON OFFICE:
2107 RAYBURN BUILDING
WASHINGTON, DC 20515
TELEPHONE 202-225-2501

JOHN W. POLLARD, JR.
BRENDA C. DONALDSON
DONNA M. WELDON

JACKSONVILLE OFFICE:
314 PALMETTO STREET
JACKSONVILLE, FL 32202
TELEPHONE 904-791-2587

July 29, 1987

File
Leg
HR 1983

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands, National
Parks and Forests
Dirksens 308
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find a petition which I received expressing support for my legislation to create the Timucuan Preserve in Florida. H.R. 1983 recently passed the House and has been referred to your subcommittee for consideration. I would appreciate your assistance in marking up this legislation at the earliest possible date. If I can be of any assistance, please do not hesitate to let me know.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB/rwh

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands,seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Diane Bryant 301 W. Bay St
Joyce Walker 301 W Bay St
Jerry Lee Lloyd 301 W. Bay ST
[illegible]
Juliette Cull 301 W. Bay ST.
Janice Jones 301 W. Bay St.
Jeannie Tilley 301 W Bay St
James Strickland 301 W Bay ST
Linda Tatum 301 W Bay St
Dorothy Hunt 301 W. Bay

32202

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands, seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Felicia Bravo	Regis Beauty Shop - Regency Square
Jim Smith	
[illegible]	"
[illegible]	"
[illegible] Maurico	"
Maria Mauricio	"
L. Makowich	"
Harriet Gillenger	3936 Emeralds Cir. So. [illegible]
Victoria [illegible]	Regis
Willie Shields	3151 [illegible] St, Jax Fla 32209

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands, seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Patricia A. Bennett	8479 Newton Rd. 32216
[illegible] Bennett	8479 Newton Rd. 32216
Edith Bennett	3316 White Ave 32207
[illegible] Bennett	4964 EMPIRE Point 32207
[illegible] Bennett	4964 EMPIRE Point 32207
Edward Myers	2114 White Ave 32207
Tracy B Carpenter	5239 N. Santa Monica Blvd 32207
Grace Bennett	5239 N Santa Monica Blvd 32207
Carl Olson	5800 [illegible] Rd S. #134 32216
Ethel B [illegible]	1242 Kinnard St. 32208

PETITION TO SUPPORT

HOUSE BILL

HR 1983

We the undersigned wish to be counted in the support column for the proposed legislation to protect our natural resources and land from further encroachment by development.

We feel this bill represents a contientious effort to protect our natural wetlands,seashore and river front from further destruction.

Please vote for this bill on our behalf. Reaffirm our belief in Government for the people and by the people.

Thank you in advance for your support.

SIGNED:

Gail Fountain	1757 Palmdale St - Jax Fl 32208
[illegible]	[illegible]
Constance [illegible]	[illegible] St Jax 32208
[illegible]	[illegible]
Wayne E. [illegible]	401 Monument Rd #226 32211
[illegible]	[illegible]
Marianne E. [illegible]	6236 [illegible] Cir E. 32217
[illegible]	[illegible]
[illegible]	[illegible]
Abigail G. [illegible]	1044 STOKes ST Jax 32221

CHARLES E. BENNETT
MEMBER
3RD DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE
AND DEFENSE POLICY PANEL

MERCHANT MARINE AND FISHERIES
COMMITTEE

CHAIRMAN OF FLORIDA CONGRESSIONAL
DELEGATION AND OF
MILITARY REFORM CAUCUS

Congreſs of the United States
House of Representatives
Washington, DC 20515

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ADMINISTRATIVE ASSISTANT

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JOHN W. POLLARD, JR.
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DONNA M. WELDON

JACKSONVILLE OFFICE
314 PALMETTO STREET
JACKSONVILLE, FL 32202
TELEPHONE 904-791-2587

October 7, 1987

Honorable Dale Bumpers, Chairman
Subcommittee on Public Lands,
National Parks and Forests
Room 308 Dirksen Office Building
Washington, D.C. 20510

Attention: Beth Norcross

Dear Dale:

Enclosed is correspondence I have just received from Florida Attorney General Butterworth, which pertains to H.R. 1983, the Timucuan Ecological and Historic Preserve. I think this is appropriate for inclusion in the hearing record, and hope you see fit to do so.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB:ems

Enclosure

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

October 2, 1987

The Honorable Charles E. Bennett
Congress of the United States
House of Representatives
2107 Rayburn Building
Washington, D.C. 20515

Dear Congressman ~~Bennett~~: Charlie

Thank you for your recent letters concerning Fort George Island. Your perseverance and leadership in attempting to preserve this unique island are appreciated.

On October 13, 1987, the Selection Committee will vote on whether the Florida Wildlife Federation proposal to place Fort George on the CARL list should be referred to staff for a preliminary assessment. I have asked my staff to monitor the proceeding on this proposal. I am confident that the Selection Committee will be well informed on the multitude of unique natural resources this island shelters.

Our office has expanded its quiet title suit against Fairfield Communities, Inc. (copy enclosed) to include an additional 91 acres which the state already owns. As you know, I am deeply committed to protecting lands held in State trust for the people of Florida and, therefore, the focus of my effort must be in this area.

Enclosed are copies of some newspaper articles and other material on Fort George that may interest you. Thanks again for your continuing interest and commitment to protect the public interest in this very important matter. If I can be of any further assistance, do not hesitate to call me.

Sincerely,

Bob

Robert A. Butterworth
Attorney General

RAB/ewb

Enclosures

AN AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

BOB MARTINEZ
GOVERNOR

September 17, 1987

Mr. Thomas G. Pelham, Secretary
Department of Community Affairs
Howard Building
2571 Executive Center Circle, East
Tallahassee, Florida 32399

Dear Secretary Pelham:

This letter will confirm our phone conversation of several days ago when we discussed your role in the controvery surrounding Fairfield Communities' development on Ft. George Island. As you will recall, in February of this year, you were directed by then Chief of Staff Jim Smith to delegate all decision-making concerning the project to John Radey, who was empowered by the Governor to be Acting Secretary of the Department for that purpose. Since that time, John Radey has handled virtually all the matters relating to the development that have come before your agency.

Recently, however, this office learned that several weeks ago you contacted a city official in Jacksonville to discuss the role of the Attorney General's Office in giving legal opinions relating to developments of regional impact. While it is understandable that you believed your actions related to broad Department policy and not Fairfield's development in particular, the Governor is very concerned that the public will perceive that your actions involved a conflict of interest. That is a perception that cannot be tolerated, and the Governor has asked that you refrain from taking action in the future that is even tangentially related to Fairfield's project.

Thank you very much for your consideration in this matter, and should you have any additional questions or comments, please do not hesitate to contact me.

Sincerely,

Joseph G. Spicola, Jr.
General Counsel

JGS/kcg

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

August 17, 1987

Dear Governor Martinez and Cabinet Members:

The purpose of this letter is to provide an updated chronology and status report on litigation involving the proposed Fort George development by Fairfield Communities of Little Rock, Arkansas. Because of the number of legal proceedings initiated by Fairfield, as well as the number of public interest issues implicit in these proceedings relating to our duties as members of the FLWAC and Board of Trustees, a clear record of relevant events is essential.

As you recall, the issue whether plans for the proposed development are consistent with the Amended Development Order entered by the Governor and Cabinet sitting as FLWAC in 1984 was referred by FLWAC to the Division of Administrative Hearings. Before the case could be heard, however, Fairfield sought to invalidate the FLWAC rule authorizing appropriate participation in the review process by such third parties as neighborhood associations, sportsmen's organizations, and environmental groups. After the hearing officer upheld the FLWAC rule, Fairfield appealed that decision to the First District Court of Appeal.

In January 1987, Fairfield attacked FLWAC jurisdiction on another front, filing another motion to dismiss the case, alleging that a purported "settlement agreement" signed by the DCA, the City of Jacksonville and Fairfield on January 5, 1987, meant that FLWAC no longer had jurisdiction. The hearing officer denied Fairfield's motion to dismiss and held that FLWAC did have jurisdiction. Fairfield then attempted to persuade the First District to issue an order prohibiting FLWAC from ever hearing the case. The First District refused to do so. Fairfield asked for a rehearing and that request was denied earlier this month.

While Fairfield was pursuing these challenges to FLWAC's jurisdiction in the courts, a series of other events relating to Fairfield have taken place in recent weeks:

> --New testing of well water on the island shows evidence of dramatically increased saltwater intrusion into the water table over the past three years, possibly attributable to the increased fresh water demand stemming from development already in progress. This situation raises the question of whether fresh water supplies will be adequate for additional development, especially at the scale proposed.
>
> --A quiet title action by the State against Fairfield remains pending. The corporation is still unable to produce evidence that it owns submerged lands depicted by the developer upon its development project maps. Fairfield has claimed more than 100 acres of lands lying offshore to the island, lands we contend are held in trust by the State for the people of Florida.
>
> --According to Federal grand jury testimony and members of the U.S. Attorney's Office, Rodney L. Hurst was instrumental as a Jacksonville City Councilman in 1982 in winning approval of a rezoning on behalf of Fairfield after receiving personal loans of more than $6,000 from Thomas H. Greene, one of Fairfield's attorneys.
>
> --Greene, and Dawson McQuaig, former city attorney and current Fairfield attorney, have joined with others in filing an appeal with the 11th U.S. Circuit Court of Appeals in Atlanta in an effort to block a federal grand jury from reading transcripts of their testimony given earlier to a state grand jury.
>
> --On Friday, August 7, a federal court jury in Jacksonville found Jacksonville City Council staff director Henry Stout guilty of five counts of perjury; two of these counts related to his testimony given before a federal grand jury in answer to questions related to the Fort George development.

--The Office of the State Attorney in Jacksonville has begun an investigation into McQuaig's activities for possible violation of local ordinances in his current representation of Fairfield.

--The U.S. Attorney's Office and the Federal Bureau of Investigation have confirmed an on-going investigation into the local review process undergone by Fairfield's proposed project.

--In a July 13, 1987, letter to the Governor, counsel for Fairfield argued that Fort George Island should not be included in the Federal Government's Coastal Barrier Resource System primarily on the grounds that the proposed development is a development of regional impact (DRI) subject to an approved development order; eight days later in a letter to me, this same lawyer asserted the project "is no longer a DRI," a change in position apparently intended to escape further review by the Governor and Cabinet (see attachments).

These and other events have raised serious questions that should be of concern both to the City and to the State. At the heart of many of these questions is the fact that local approval of the proposed development's size was based on a good-faith acceptance of Fairfield's land claims. If Fairfield, in fact, does not own the submerged land in question, then it is unlikely the project would have been approved at its current scale.

Fort George Island is a Florida treasure. It includes numerous historically significant structures of unique construction. In addition, the island enjoys a natural canopy which currently provides an environment conducive to the presence of several rare plant and bird species. The State is fortunate to own two tracts on the island: the Rollins Sanctuary and the Kingsley Plantation. If the opportunity ever presented itself, the City, State and/or Federal Government might well consider expanding the public holdings. Much of the island now is in private ownership, including the Fairfield tract. These owners, of course, have a right to use their land. However, development must comply with the standards set by law. A failure to do so would be unfair to the island's other landowners. These other landowners include the people of Florida as well as the current Fort George residents, some of whose families have lived there for three or more generations.

To protect the interests of these other landowners, including the citizens of Florida, it is the position of my office that Fairfield either must meet its legal burden to demonstrate to a court of law its ownership of the submerged land in question or scale down the density of the proposed construction to reflect the corporation's true land holdings.

I will keep you informed in a timely fashion of further developments concerning this project, particularly as they pertain to litigation. In the interim if any of you have any comments or questions, please relay such to my office.

Sincerely,

Bob

Robert A. Butterworth
Attorney General

RAB/ylj

Attachments

LAW OFFICES
AURELL, FONS, RADEY & HINKLE
SUITE 1000, MONROE-PARK TOWER
101 NORTH MONROE STREET
POST OFFICE DRAWER 11307
TALLAHASSEE, FLORIDA 32302

TELEPHONE 681-7766
AREA CODE 904

August 24, 1987

✓

Mr. W. Ray Newton
Director of Planning
Suite 700, Florida Theatre Building
128 East Forsyth Street
Jacksonville, Florida

William L. Hyde, Esquire
Roberts, Baggett, LaFace & Richard
101 E. College Avenue
Tallahassee, Florida 32301

Dear Messrs. Newton and Hyde:

Re: Fairfield Ft. George Island

This letter is the response of the Florida Department of Community Affairs (the "Department") to your inquiries about the proposed Ft. George Island project of Fairfield Communities, Inc. (the "Project" and the "Developer"). The basic question presented is whether the Project continues to be a development of regional impact that is required to be reviewed under Chapter 380, Florida Statutes. ("DRI review") The question arises in the context of the Department's 1982 determination in a binding letter of interpretation ("BLID") that the Project was subject to DRI review, a DRI review for the Project that is multi-faceted and ongoing, and intervening statutory amendments changing the guidelines and standards that control when a project is subject to DRI review.

BLID-482-056

On August 11, 1982, the Department issued its binding letter that concluded that the Project "is a Development of Regional Impact" and ordered the Developer "to comply with the review requirements of Section 380.06, Florida Statutes." A binding letter is binding upon "all state, regional, and local agencies, as well as the developer" as specifically provided in Section 380.06(4)(d). As the word "binding" suggests, binding letters cannot be simply ignored after issuance and courts will require that such letters be given considerable deference:

> If binding letters of interpretation are to have the settling effect intended for them by the legislature, their integrity must be respected by the Division, developers and the courts.

General Development Corp. v. Division of State, 353 So.2d 1199, 1206 (Fla. 1st DCA 1978); see also South Florida Regional Planning Council v. State, 372 So.2d 159 (Fla. 3rd DCA 1979).

Given that the Department is bound by its binding letters, and further given that the integrity of binding letters must be respected, must the Department permanently take the position that a development must undergo DRI review if the Department has issued a binding letter determining that a project is a DRI? In other words, given that the Department determined the Fort George Project to be a DRI in 1982, must the Project continue to be a DRI?

The answer to those questions is no. No provision in Chapter 380 expressly states how long and whether a BLID remains binding when the binding letter determines that a proposed development is a development of regional impact.[1] In the General Development case, supra, the court found that the Department could revoke a binding letter where "its essential predicate", as set out in the binding letter, changes after issuance of the binding letter. 353 So.2d at 1206. Thus, a binding letter is not necessarily binding where a development changes or where the commitments of a developer change. The underlying principle is that a binding letter is only binding as to the facts which are the essential predicate of the binding letter.

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[1] Section 380.06(4)(g) provides that a BLID determining a proposed development to not be a DRI will generally expire after three years in the absence of substantial commencement.

Under the facts presented with respect to the Project, it appears that the Project has changed since 1982. Notably, the drainage plan has changed, the number of golf holes and preservation areas have changed, the marina has been eliminated, and the development has been otherwise modified. No doubt some of those modifications now provide some assurances with respect to the regional impacts that gave rise to BLID-482-056. However, the important resources that may be affected by the Project still exist and whether the Project would have been found to be a DRI in 1982 as now proposed is a complex question that does not lend itself to quick informal guidance. Every project undergoing DRI review is changed in many ways and the changes to the Project since 1982, while significant, may or may not make a difference. But that significance need not be decided here given the 1985 changes in the DRI law.

In particular, Section 380.06(2) was changed to provide that developments below 80% of all numerical thresholds in the guidelines and standards are not to be required to undergo Chapter 380 review.

A binding letter allows a developer to obtain a binding interpretation of how the guidelines and standards approved under Section 380.06(2) apply to a particular project. For example, in BLID-482-056, the then-effective guidelines and standards contained in Rule Chapter 27F-2 were interpreted and applied to the Project. Just as the essential aspects of a plan of development may change and obviate a BLID, so too if the guidelines and standards being applied to a project change, then the BLID may be obviated by operation of law. A binding letter is a binding application of existing guidelines and standards to a given project.[2] Thus, just because a BLID in 1982 resulted in the Department determining that the Project was subject to review under Section 380.06 does not mean that the Department is bound to that same determination today unless the underlying guidelines and standards, as well as the essential elements of the project, remain the same.

APPLICABLE GUIDELINES AND STANDARDS

The present DRI law does contain a provision that explains whether existing or older DRI guidelines and standards are applicable to a project. That provision is as follows:

> With regard to the changes in the guidelines and standards authorized pursuant to this act, in determining whether a proposed development must comply with the review requirements of this section, the state land planning agency shall apply the guidelines and standards which were in effect when the developer received authorization to commence development from the local government. If a developer has not received authorization to commence development from the local government prior to the effective date of new or amended guidelines and standards, the new or amended guidelines and standards shall apply.

Section 380.06(2)(c), Florida Statutes. Therefore, the instruction to the Department is to apply the guidelines and standards "in effect when the developer received authorization to commence development from the local government."

Has the Developer received authorization to commence development from the City of Jacksonville as the local governmental authority? What do the words "authorization to commence development" mean? Those words were discussed in *City of Ft. Lauderdale v. State*, 424 So.2d 102 (Fla. 1st DCA 1982), where the court affirmed the Department's binding letter that the City's airport runway extension would require DRI review because there was no "authorization to commence development" under the vested rights provision of the DRI law. In question in the *City of Ft. Lauderdale* case was whether two resolutions before 1973 constituted "authorization to commence development." The court held that the resolutions "did not constitute approval to do anything" and had "no legally binding status." 424 So.2d at 103. The court was unwilling to find an "authorization to commence development" without specific, binding approval of the runway extension by local government.

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[2] Indeed, a binding letter is a final order having res judicata effect. However, "it is well settled that res judicata is not a defense in a subsequent action where the law under which the first judgment was obtained is different from that applicable to the second action." Thompson v. Thompson, 93 So.2d 90, 92 (Fla. 1957).

With respect to the Project, the City of Jacksonville has on numerous occasions considered the Project. It entered a development order in 1983, but that development order was appealed. Subsequently, an amended development order was agreed to by the City and all other parties, but that amended development order required the Developer to prepare Master Resource Management Plans, a revised Master Land Use Plan, and specific resource management plans *before commencing development*. In the words of the *City of Ft. Lauderdale* case, it appears that Fairfield has not received binding approval for specific development from the City of Jacksonville. In addition, the amended development order provides that Developer can terminate the amended development order upon written notice to the City and it is our understanding that the Developer has or will give that notice and terminate any rights that it may have had under the amended development order.

The Developer, the City, those opposing the development, and the Department appear to be in agreement that the conditions precedent to the Developer actually beginning physical development of the Project have not been fulfilled. The Developer does not today have the right to actually begin or commence development.[3] The various studies and plans prepared by the Developer are not simple conditions precedent to actual development, but rather appear to require further approvals from the various agencies, including the City of Jacksonville, which place in question whether, or the extent to which, development of the Project will actually take place.

Under these circumstances, it appears that Developer has not received "authorization to commence development" from the City of Jacksonville as those words are used in Section 380.06(2)(c), Florida Statutes.

The most plausible plain meaning interpretation is that the authorization intended in Section 380.06(2)(c) is an official act by a local government (the City of Jacksonville) having jurisdiction which permits Developer to begin any activity defined in Section 380.04, Florida Statutes, for which local approval is required. Developer appears to have received no permission for any such activity. As a consequence, the new and amended guidelines and standards that became effective after the 1985 legislation apply to any determination as to whether the Project must undergo DRI review. Applying those guidelines and standards, it appears that the Project must be found not to be a DRI because the Project is less than 80% of the applicable guidelines and standards and because the Florida Legislature decided that the Department would no longer have the discretion to determine that projects must undergo DRI review when the projects are at or below 80% of all numerical thresholds. Section 380.06(d)(1), Florida Statutes.

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[3] The Department's position in this regard is the same position that it has taken in the past. For example, on September 12, 1986, the Department stated that the "ADO did not allow Fairfield to begin any development activity on Fort George Island." See Department of Community Affairs' Response to Petitioners' Petition for Enforcement of Agency Action, p.2, filed with the Florida Land and Water Adjudicatory Commission, September 12, 1986.

This conclusion seems to be a sensible interpretation of the DRI statute. A new project proposed for the first time today with the size and location of the Ft. George Project would not be required to undergo DRI review. It appears to make good sense that the Developer's efforts to obtain approval under the DRI law from 1982 until the present should not cause the Department to interpret the DRI law to require the Ft. George Island Project to undergo additional DRI review now, despite the new legislation. The opposite conclusion would appear absurd. Fixed thresholds are a part of the DRI law and this Department must implement the DRI law as reasonably as possible.

Of course, this conclusion does not undermine the jurisdiction of the City of Jacksonville with respect to its power to regulate the Project. Likewise, many other regulatory agencies, federal and state, will continue to have jurisdiction to regulate without reference to the DRI process. This letter addresses solely the question of whether the Project must continue in the DRI process.

This letter is not a binding letter under Chapter 380 or a formal declaratory statement, but rather is informal advice as to the Department's position as to the questions presented. If after review of this letter, there remains doubt as to the rights and responsibilities of affected parties, then it is possible that a formal statement by the Department could be sought and, in that event, the proper procedure would be followed whether a request is made for a binding letter, a declaratory statement, or some other formal agency action. The Department upon being required to take formal action would examine the facts, law, and argument presented in that process and would enter a final order consistent with its analysis at that time. However, the Department's position set out above has been arrived at only after full consideration of voluminous records related to the Project and only after giving the Developer, those opposing the Project, and the Florida Attorney General an opportunity to provide information and insights into what position the Department should take with respect to the Project.

Sincerely,

John Radey

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JR/aa

Florida Times Union
9-30-87

Senators support preserve plans for Fort George

By Frank LoMonte

Washington bureau

WASHINGTON — Florida's U.S. senators yesterday came out in favor of Rep. Charles Bennett's plan to include Fort George Island in a 35,800-acre preserve he wants to create in northeast Duval County.

Sens. Lawton Chiles and Bob Graham, both D-Fla., urged the Senate Energy and Natural Resources Committee to act quickly on Bennett's bill to establish the Timucuan Ecological and Historic Preserve, which passed the House unanimously more than two months ago.

Chiles and Graham have filed a Senate companion to Bennett's bill that does not include Fort George Island, a late addition to the House bill. But they told colleagues they fully support the House version — including Fort George.

The Reagan administration, meanwhile, voiced opposition to the bill, saying it opens the door for millions of dollars to be spent buying land that is already protected by state and federal law.

And Fairfield Communities Inc., the Arkansas-based development company that owns 70 percent of Fort George Island, protested that including Fort George in the bill could make it harder for Fairfield to go ahead with its plan to build a $200 million island development.

Under the legislation, half a dozen historic sites in northern Duval County, including the Zephaniah Kingsley Plantation and the Spanish mission of San Juan del Puerto, would be consolidated under federal ownership.

The government also would be empowered to condemn wetlands and buy any upland property within the preserve if the owners are willing to sell. Bennett, D-Fla., said he has arranged for much of the land to be donated and hopes to get private contributions to buy the rest.

Bennett told senators that he thinks Fairfield's development will be far too big for the island's ecology to support. But he said his bill will do nothing to impede the developer's plans.

That assurance was not enough for William Peterson, general manager of Fairfield's Fort George project. Peterson asked the committee to amend the bill to clarify that the preserve will not affect any government permits Fairfield needs to build on its land.

Peterson's request represents an apparent softening in Fairfield's position. Previously, the company had vowed to oppose the bill as long as Fort George was included in the preserve.

The Senate panel also heard testimony on another Bennett bill — a measure to protect sunken shipwrecks from private scavengers. Graham has filed a similar bill in the Senate along with Sen. Bill Bradley, D-N.J.

Private diving enthusiasts testified against the bill, arguing that it would discourage entrepreneurs like Key West treasure hunter Mel Fisher from making potentially important historic finds.

But Graham, Bennett and other supporters told the panel the bill strikes a compromise by letting states regulate the excavation of the shipwrecks, which will help ensure both archaeologists and private divers a fair opportunity to explore the wrecks.

Florida Times Union
9-30-87

Hearing on Fairfield permit set

The U.S. Army Corps of Engineers will hold a public hearing in Jacksonville to receive comment on a permit request from Fairfield Communities Inc. to develop Fort George Island.

The hearing will be at 7 p.m. Nov. 4 at Florida Community College, North Campus, 4501 Capper Road, in the auditorium.

Fairfield is proposing to develop 757 acres of Fort George Island into a 1,343-unit resort.

From the Corps of Engineers, Fairfield is requesting a permit that would allow it to fill 10.13 acres of land, excavate another 4.47 acres and preserve some portions.

The Florida Times-Union, Jacksonville, Wednesday, September 30, 1987

B-1

Senators support preserve plans for Fort George

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WASHINGTON — Florida's U.S. senators yesterday came out in favor of Rep. Charles Bennett's plan to include Fort George Island in a 36,800-acre preserve he wants to create in northeast Duval County.

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Ft. Myers
News-Press
9-24-87

A glaring conflict

Florida's Community Affairs Secretary Tom Pelham should be able to recognize a conflict of interest when he sees it.

It should not have required an official reprimand from Gov. Bob Martinez for Pelham to refrain from intervening with other state and local agencies on behalf of Fairfield Communities, a long-time client from Pelham's days in private legal practice.

A lawyer smart enough to be appointed as the state's top official responsible for growth management affairs should be smart enough to know, as he twice has been reminded by the governor, that even the appearance of a conflict of interest cannot be tolerated.

The case involves a $200-million, 1,343-unit residential development planned by Fairfield on fragile Fort George Island near Jacksonville.

The controversial project has drawn fire from environmentalists and other opponents. At this point, there is some question about whether it can get the necessary permits from the state.

Fairfield has been trying to get the project removed from state jurisdiction as a Development of Regional Impact.

Pelham asked Florida Attorney General Bob Butterworth to back off from a decision about leaving the DRI question in the hands of Community Affairs. And, according to an internal city memo, Pelham also expressed displeasure to Jacksonville's top planning official who had asked for the attorney general's legal opinion.

The Community Affairs secretary should have done neither, especially in view of his earlier promise not to involve himself in decisions affecting Fairfield.

Following the reprimand, Pelham said, "I will have absolutely nothing to do with Fort George in the future."

But if Pelham didn't understand the state's ethics laws well enough to have kept out of a case involving a former client, will he know enough to avoid similar problems in the future?

The need for a reprimand from the governor casts doubt on the secretary's ability to be impartial when other decisions on large-scale development come before the department.

The Florida Times-Union, Jacksonville, Tuesday, September 22, 1987

Martinez again warns Pelham to stay neutral on Fort George

By Beverly Keneagy
Staff writer

The Florida Department of Community Affairs secretary, chastised by the governor for his involvement in a proposed development on Fort George Island, said yesterday that he has discussed the project with city and state officials, but not in a decision-making capacity.

Because of Tom Pelham's talks with Jacksonville's top planning official and the Attorney General's Office, Gov. Bob Martinez warned Pelham for the second time last week that he was removed from the case in February.

Pelham is barred from making any policy decisions in the case because he was an attorney for the developer, Fairfield Communities Inc., which plans to build 1,343 residential units on the fragile island in northeastern Jacksonville. Pelham represented the company for three years before being named secretary of community affairs in January.

"The governor is very concerned that the public will perceive that your actions involved a conflict of interest," Joseph Spicola Jr., Martinez's general counsel, wrote Thursday in a letter to Pelham.

"That is a perception that cannot be tolerated, and the governor has asked that you refrain from taking action in the future that is even tangentially related to Fairfield's project," Spicola said.

Spicola said yesterday that, based on two of Pelham's contacts with the city's planning department and the Attorney General's Office, he appears to still be involved in the Fort George Island controversy.

The latest controversy involving Pelham stems from the Jacksonville Planning Department's request for a legal opinion on the Fairfield development from the Attorney General's Office.

Pelham has maintained that community affairs has jurisdiction in the case because it is

(See PELHAM, Page B-5)

the state's land planning agency. The city's questions have since been forwarded to John Radey, an independent attorney in Tallahassee who is representing community affairs.

On July 22, Pelham telephoned city Planning Director Ray Newton twice and asked that Newton not request an opinion from the Attorney General's office concerning the development.

The same day, Pelham met with the Attorney General's Office to discuss the case.

Attending the meeting were Attorney General Bob Butterworth, Deputy Attorneys General Jim York and Walter Dartland, Pelham and his general counsel, Laurence Keesey Jr.

Shortly after the meeting began, the conversation wandered from the jurisdictional issue, York said, and Pelham began defending the merits of the Fort George Island development.

"It didn't stay on the agenda for very long," York said. "We listened to an emotional presentation on how many hoops they [Fairfield] had gone through. He said they were good corporate citizens."

"I don't think what the secretary accomplished in the meeting was anything. It was more like a sticks-and-stones type approach. He lost his temper," York said.

Afterward, York wrote a memorandum on the meeting that was placed in the office file on Fort George Island.

According to York's memorandum, Pelham:

● Accused Butterworth of soliciting an opinion from Jacksonville to "continue his 'unfair treatment of Fairfield.'"

● Accused Butterworth of being biased toward the developer. Butterworth has said he favors making the environmentally sensitive island

Pelham promises to stay out of conflict

(From Page B-1)

a preserve.

- Accused Butterworth of "encroaching" into the Department of Community Affairs' jurisdiction.

"During this entire diatribe, Pelham continuously advocated Fairfield's position on the development . . . ," York wrote.

"Although Pelham said several times that he was not involved in the Fairfield matter, he consistently advocated the development's position both as the AGO [Attorney General's opinion] as well as the merits of the project," York concluded.

Pelham said he met with Butterworth's office after consulting with the governor's chief of staff, Jim Smith, who is now the secretary of state.

"Mr. Smith suggested I go see Mr. Butterworth to discuss that jurisdictional issue," Pelham said. "It was his suggestion, not mine. He thought it was appropriate."

Pelham said he was firm and professional at the meeting, but not emotional.

"I never discussed the merits of the project," he said. "There was a serious jurisdictional issue. The issue was whether Mr. Radey or Mr. Butterworth would render the opinion."

Keesey said he did not hear Pelham discuss the merits of the project.

"It was absolutely clear we were there to protect the jurisdiction of the agency," Keesey said.

Pelham said he has not been involved in any decisions concerning the Fort George Island development.

"In every instance a decision by this department has been made by Mr. Radey," Pelham said.

After receiving the letter from the governor's office, Pelham said, "I will not be involved in the future."

Radey is studying the city's legal questions, which center around whether the Fairfield project is still a development of regional impact, which requires a state review. Radey recently said in a nonbinding opinion that he thinks the project is no longer a DRI, but Fairfield is now seeking a *formal*, legal opinion from him.

Fairfield officials maintain that, if the project is not a development of regional impact, it no longer falls under the state's jurisdiction.

Tallahassee Democrat
9-21-87

Pelham told to steer clear of company

Associated Press

Gov. Bob Martinez has officially asked Department of Community Affairs Secretary Tom Pelham to stay away from a Jacksonville developer that he formerly represented.

Pelham, who had earlier agreed not to involve himself in decisions affecting the company, Fairfield Communities Inc., has twice intervened on behalf of the firm since taking office, the St. Petersburg Times reported this weekend.

Fairfield wants to build a $200-million development on Fort George Island in Jacksonville, and seeks to have the project removed from state jurisdiction.

On one occasion, Pelham asked Attorney General Robert Butterworth to back off on a jurisdictional dispute on which department would determine the case. The city of Jacksonville asked Butterworth for an official opinion on whether Fairfield out to remain a development of regional impact.

The secretary also telephoned Jacksonville's city planner to express his displeasure about the request for a legal opinion from the attorney general, according to a memo written by planner W. Ray Newton.

Martinez notified Pelham in writing last week to stay out of Fairfield's affairs.

General Counsel Joe Spicola Jr. told Pelham the governor "is very concerned that the public will perceive that your actions involved a conflict of interest. This is a perception that cannot be tolerated, and the governor has asked that you refrain from taking action in the future that is even tangentially related."

Pelham said Friday that he accepted the rebuke and would follow the governor's request.

"I will have absolutely nothing to do with Fort George in the future," Pelham said. "I don't think I'll ever mention the words again."

The DCA must decide whether Fairfield's planned development on Fort George Island should remain classified as a Development of Regional Impact. That decision is important fo Fairfield because if it does not remain a DRI project, the state would no longer have jurisdiction over it.

Pelham, a Tallahassee attorney, represented Fairfield for more than three years before being named head of DCA in January.

Butterworth said Pelham approached him about leaving the decision on the controversial Fort George project in the hands of DCA.

"He told us he thought Fairfield was a good project, and he asked me not to get involved in it," Butterworth said.

Pelham denied he tried to intervene on behalf of his former client, but two deputy attorney generals disputed that.

"Pelham continuously advocated Fairfield's position on the development," wrote deputy attorney general Jim York. "Although Pelham said several times that he was not involved in the Fairfield matter, he consistently advocated the development's position as to the AGO (attorney general opinion) as well as to the merits of the project."

Fairfield Communities wants to build 1,343 homes on Fort George Island, a thousand acres of tropical hardwoods at the mouth of the St. John's River.

Conservationists have fought the development for years and state and federal grand juries have been looking at the involvement of some Jacksonville city officials in the project.

The Florida Times-Union/Jacksonville Journal, Jacksonville, Sunday, September 20, 1987 ★★★★ B-5

Martinez orders Pelham out of Fairfield dispute

Associated Press

TALLAHASSEE — Gov. Bob Martinez has officially asked Department of Community Affairs Secretary Thomas G. Pelham to stay away from Fairfield Communities Inc., a Jacksonville developer he formerly represented.

Pelham, who had earlier agreed not to involve himself in decisions affecting the company, has twice intervened on behalf of the firm since taking office, the St. Petersburg Times reported yesterday.

Fairfield wants to build a $200 million development on Fort George Island in Jacksonville, and seeks to have the project removed from state jurisdiction.

On one occasion, Pelham asked Attorney General Robert Butterworth to back off on a jurisdictional dispute on which department would determine the case. The city of Jacksonville asked Butterworth for an official opinion on whether Fairfield ought to remain classed a development of regional impact.

The secretary also telephoned Jacksonville's city planner to express his displeasure about the request for a legal opinion from the attorney general, according to a memo written by planner W. Ray Newton.

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Pelham said Friday he accepted the rebuke and would follow the governor's request.

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The DCA must decide whether Fairfield's planned development on Fort George Island should remain classified as a Development of Regional Impact. That decision is important for Fairfield because if it does not remain a DRI project, the state would no longer have jurisdiction over it.

Pelham, a Tallahassee attorney, represented Fairfield for more than three years before being named head of DCA in January.

Butterworth said Pelham approached him about leaving the decision on the controversial Fort George project in the hands of DCA.

"He told us he thought Fairfield was a good project, and he asked me not to get involved in it," said Butterworth.

Pelham denied he tried to intervene on behalf of his former client, but two deputy attorneys general disputed his claim.

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Local and state conservationists have fought the development for years and state and federal grand juries have been looking at the involvement of some Jacksonville city officials in the project.

St. Petersburg Times 9-19-87

Official chastised for involvement in project

By DAVID BALLINGRUD
Times Staff Writer

Before becoming secretary of the state Department of Community Affairs (DCA) early this year, lawyer Thomas G. Pelham represented Jacksonville developer Fairfield Communities Inc.

PELHAM

When picked by Gov. Bob Martinez to head the DCA, Pelham agreed not to involve himself in decisions affecting Fairfield.

Despite the agreement, Pelham twice has involved himself in a Fairfield matter — once with a Jacksonville city official and again with Attorney General Robert Butterworth.

This week Martinez told him in writing to stay out of Fairfield's affairs. The governor "is very concerned that the public will perceive that your actions involved a conflict of interest," general counsel Joseph G. Spicola Jr. wrote to Pelham. "This is a perception that cannot be tolerated, and the governor has asked that you refrain from taking action in the future that is even tangentially related" to the developer's project.

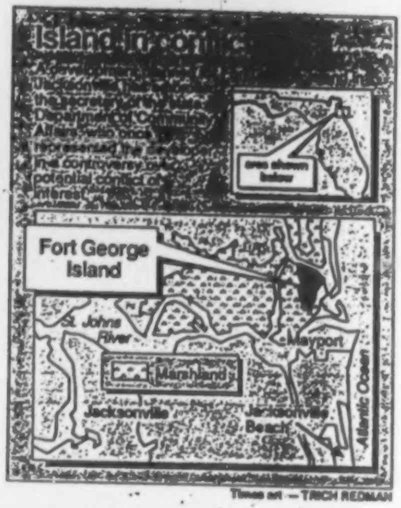
Pelham said Friday he did nothing wrong, but accepted the rebuke. "The governor is concerned, and I have the greatest respect for the governor. I will follow his request to the fullest."

Fairfield plans a controversial $200-million development on Fort George Island in Jacksonville. Pelham, a lawyer, represented Fairfield for more than three years prior to being named head of DCA in January.

The DCA, as the state's land planning agency, is soon to decide whether the project must remain classified as a Development of Regional Impact (DRI). That decision is important to Fairfield because if the project is no longer a DRI, the state no longer has jurisdiction over it.

Because of Pelham's potential conflict of interest in the matter, Martinez appointed a lawyer in private practice to act as the head of DCA in matters related to Fairfield.

But Pelham continued to involve himself in the case. On July 22, he discussed the Fairfield project in two telephone calls to a city of Jacksonville planning official.



Times art — TRICH REDMAN

That same day, Pelham discussed it with Butterworth and two of Butterworth's deputies.

Pelham says he did not violate the instructions from the governor because he made no decisions concerning Fairfield. He discussed the project with Butterworth and the Jacksonville official, he said, only because it was an example of a jurisdictional

Please see ISLAND 8-B

8E THE NEWS HERALD, Panama City, Fla., Sunday, Sept. 20, 1987

Martinez tells DCA chief to sever ties to developer

Associated Press

TALLAHASSEE — Gov. Bob Martinez has officially asked Department of Communty Affairs Secretary Thomas G. Pelham to stay away from a Jacksonville developer he formerly represented.

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On one occasion, Pelham asked Attorney General Robert Butterworth to back off on a jurisdictional dispute on which department would determine the case. The city of Jacksonville asked Butterworth for an official opinion on whether Fairfield out to remain classed a development of regional impact.

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PLAYGROUND NEWS 9/20/87

Martinez request DCA secretary cut ties with Florida developer

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"I will have absolutely nothing to do with Fort George in the future," said Pelham. "I don't think I'll ever mention the words again."

The DCA must decide whether Fairfield's planned development on Fort George Island should remain classified as a Development of Regional Impact. That decision is important fo Fairfield because if it does not remain a DRI project, the state would no longer have jurisdiction over it.

Pelham, a Tallahassee attorney, represented Fairfield for more than three years before being named head of DCA in January.

Butterworth said Pelham approached him about leaving the decision on the controversial Fort George project in the hands of DCA.

"He told us he thought Fairfield was a good project, and he asked me not to get involved in it," said Butterworth.

Pelham denied he tried to intervene on behalf of his former client, but two deputy attorney generals disputed his claim.

"Pelham continuously advocated Fairfield's position on the development," wrote deputy attorney geeneral Jim York. "Although Pelham said several times that he was not involved in the Fairfield matter, he consistently advocated the development's position as to the AGO (attorney general opinion) as well as to the merits of the project."

The Orlando Sentinel, Sunday, September 20, 1987 B-3

Halt conflict of interest, Martinez tells Pelham

ASSOCIATED PRESS

TALLAHASSEE — Gov. Bob Martinez has asked Department of Community Affairs Secretary Thomas Pelham to stay away from a Jacksonville developer he formerly represented.

Pelham, who had agreed not to involve himself in decisions affecting Fairfields Communities Inc., has twice intervened on behalf of the company since taking office, the *St. Petersburg Times* reported Saturday.

Fairfield wants to build a $200-million development on Fort George Island in Jacksonville, and seeks to have the project removed from state jurisdiction.

Pelham once asked Attorney General Robert Butterworth to back off on a dispute over which department would determine the case. Jacksonville asked Butterworth for an opinion on whether Fairfield is a development of regional impact.

The secretary also telephoned Jacksonville's city planner to express his displeasure about the request for a legal opinion from the attorney general, according to a memo written by planner W. Ray Newton.

Martinez told Pelham in writing this week to stay out of Fairfield's affairs.

Pelham said Friday he accepted the rebuke and would follow the governor's request.

"I will have absolutely nothing to do with Fort George in the future," said Pelham. "I don't think I'll ever mention the words again."

Community Affairs must decide whether Fairfield's planned development on Fort George Island should remain classified as a development of regional impact. That decision is important to Fairfield because if it does not retain that classification, the state would no longer have jurisdiction over it.

Pelham, a Tallahassee attorney, represented Fairfield for more than three years before taking his current post in January.

Butterworth said Pelham approached him about leaving the decision on the controversial Fort George project in the hands of community affairs.

"He told us he thought Fairfield was a good project, and he asked me not to get involved in it," said Butterworth.

Pelham denied he tried to intervene for his former client, but two deputies in the attorney general's office disputed his claim.

"Pelham continuously advocated Fairfield's position on the development," wrote deputy attorney general Jim York. "Although Pelham said several times that he was not involved in the Fairfield matter, he consistently advocated the development's position" as to the attorney general's opinion as well as to the merits of the project.

Fairfield Communities wants to build 1,343 homes on Fort George Island, a thousand acres of tropical hardwoods at the mouth of the St. Johns River.

Conservationists have fought the development for years and state and federal grand juries have been looking at the involvement of some Jacksonville city officials in the project.

Island

from 1-B

problem he wanted to resolve.

Butterworth, at the city of Jacksonville's request, was about to write an official opinion on whether Fairfield ought to remain classed a development of regional impact.

Only DCA should make that determination, Pelham said.

"I personally could care less what the ultimate decision on the project is," Pelham said, "but I do care about the integrity of the process and the responsibilities of my department."

Butterworth and deputy attorney generals Jim York and Walter Dartland remember the July 22 meeting differently.

It's true there was a jurisdictional dispute between DCA and the office of the attorney general, Butterworth said, but that's not all that was on Pelham's mind.

"He told us he thought Fairfield was a good project, and he asked me not to get involved in it," Butterworth said.

"Pelham talked about how the company (Fairfield) had gone through all the hoops, about how they were good citizens," said Dartland. "Right after the meeting we had a kind of debriefing. We said to each other, what's this guy doing here? Why is he even talking about Fairfield? It's inappropriate."

Deputy Attorney General York attended the meeting, then summarized it in a "memo to the file." The memo states, in part:

"After initial pleasantries, Secretary Pelham began a very forceful attack on the attorney general's motives with regard to Fairfield's development, in which he:

- "Accused the attorney general of soliciting an opinion request from the city of Jacksonville in order to continue his 'unfair treatment of Fairfield.'
- "Accused the attorney general of bias toward Fairfield.
- "Accused the attorney general of 'encroaching' into DCA affairs."

"During this entire diatribe," York's memo states, "Pelham continuously advocated Fairfield's position on the development . . ."

The memo concludes: "Although Pelham said several times that he was not involved in the Fairfield matter, he consistently advocated the development's position both as to the AGO (attorney general opinion) as well as to the merits of the project."

In an interview, York said Pelham was "rather emotional during the meeting. Obviously upset. It was more a matter of tone than volume, but his tone put me back a little."

Pelham said it is "absolutely untrue that I spoke in behalf of Fairfield."

Larry Keesey, DCA's general counsel, attended the meeting with Pelham. Keesey first said he had no recollection of whether or not Pelham spoke favorably of the Fairfield project. But after being told of how the attorney general and his deputies characterized the meeting, Keesey said Pelham "did not talk about the merits of the project. He made no defense of Fairfield."

Also on July 22, prior to his meeting with Butterworth, Pelham telephoned W. Ray Newton, director of planning for the city of Jacksonville. According to a memo written by Newton, Pelham "indicated his displeasure with me requesting a legal opinion from the attorney general without first contacting him (Pelham). I responded that I did not intentionally contact him because of his conflict with Fairfield, and he indicated he would take this matter up personally with the attorney general."

Spicola, Martinez's general counsel, said he wrote to Pelham this week to confirm a conversation between the two men last week.

"I told him then," Spicola said Friday, "that the governor didn't want him to deal with Fairfield in any way, directly or indirectly. We're not going to tolerate that. If what Butterworth said actually happened, then that would be against our wishes, and we would not tolerate it."

"I will have absolutely nothing to do with Fort George in the future," Pelham said. "I don't think I'll ever mention the words again."

Fairfield Communities wants to build 1,343 homes on Fort George Island, a thousand acres of tropical hardwoods at the mouth of the St. Johns River in Jacksonville.

A coalition of local and state conservationists has fought the development for years, and more recently state and federal grand juries have been looking at Jacksonville city hall's involvement with the project.

In an Aug. 17 memo to Martinez and other members of the Florida Cabinet, Butterworth notes:

- That in 1982 Jacksonville council member Rodney Hurst was "instrumental in winning approval of rezoning on behalf of Fairfield after receiving personal loans of more than $6,000 from Thomas H. Greene, one of Fairfield's attorneys."
- "Greene, and Dawson McQuaig, former city attorney and current Fairfield attorney, have joined with others in filing an appeal with the 11th U.S. Circuit Court of Appeals . . . in an effort to block a federal grand jury from reading transcripts of their testimony given earlier to a state grand jury."

(Since Butterworth wrote the memo, McQuaig has been indicted on conflict of interest charges.)

- On Aug. 7, Jacksonville City Council staff director Henry Stout was found guilty of five counts of perjury. "Two of these counts related to his testimony given before a federal grand jury in answer to questions related to the Fort George development."

U.S. Attorney Robert Merkle, whose jurisdiction includes Jacksonville, declined to discuss the case.

THE FLORIDA TIMES-UNION/JACKSONVILLE JOURNAL
SUNDAY, SEPTEMBER 6, 1987

Politics got in way of Fairfield development flap

By Frank LoMonte
Staff writer

Something is wrong at Fort George Island.

If you ask Fairfield Communities Inc., what's wrong is that a company with a track record of responsible developments has invested five years and $6 million going through the most demanding development review in state history, yet still has not gotten permission to break ground.

If you ask the Friends of Fort George Inc., what's wrong is that a seemingly endless series of local, regional and state agencies have refused to put a stop to a deeply flawed development plan that would despoil the simple, rural beauty of an island paradise.

Over the past 20 years, Florida has enacted one of the most sophisticated systems in the nation to decide who can build what where. But at Fort George Island — a small patch of thick marshes and sandy uplands tucked away in the northeast corner of Jacksonville — something funny happened.

The system stopped working. For both sides.

Lawsuits were filed, concessions made, definitions disputed, and plans were drawn and redrawn and withdrawn. All the while, delays brought frustration and heavy legal costs for both sides.

At one time or another, parts of Fairfield's plans have been reviewed by four state agencies, two regional agencies, three city agencies, one federal agency, the City Council, the Florida Land and Water Adjudicatory Commission and two governors.

Many have wanted to say no, but no one has.

Many who have looked at the plans think that 1,343 units, as Fairfield is contemplating, would put far too great a strain on the delicate ecology of the 950-acre barrier island.

They fear 3,000 new residents would exhaust the island's meager groundwater supply within a generation. And they fear that building homes, roads and shops for those 3,000 people will mean bulldozing and paving one of the last natural refuges for wild birds and plants in Northeast Florida.

"Frankly, I always thought 1,343 units was much too much for that island," said Tom Lewis Jr., former secretary of the Department of Community Affairs. "If I had had my druthers, I would have liked to see that island developed by about 10 percent of that — or not at all.

"But by the time I got to it, I couldn't open up the question of, 'Should it or shouldn't it?' Someone else had already made that judgment."

At times, both sides in the Fort George dispute have been frustrated by the gulf between the city's handling of the project and the state's.

Bluntly put, the city has always welcomed the Fairfield proposal while the state has always eyed it with suspicion. If the city has bent over backward to give the developers every consideration, the state has done everything to give the opponents their day in court.

Part of those different outlooks can be chalked up to effective lobbying by both proponents and opponents. But those roles came naturally to the state and the city — while the state tends to view new developments as problems, cities see them as opportunities.

In many ways, the Fort George case is typical of the ordeal big developers and their opponents must go through in Florida. And it is also typical of the lengths people on both sides of the development issue are willing to go to in pressing their point.

Politics, as is often the case, got in the way. Environmental groups pressured Gov. Bob Graham and the Cabinet to raise regulatory roadblocks at every point, while Fairfield hired some of Jacksonville's biggest political guns to ramrod its permits through City Hall.

And not all the efforts may have been legal. The FBI, the U.S. Attorney's Office and the State Attorney's Office all are probing irregularities in the conduct of Fairfield's lawyers — an inquest that already has led to criminal charges against one former city councilman, Rodney Hurst.

"You are looking at millions of dollars of land value, and when you put that kind of money in somebody's mind, corruption is going to follow as surely as night follows day," said James Nicholas, director of the Growth Management Center at the University of Florida law school.

Trying to follow all the regulatory battles that have been waged over the Fairfield project — and to figure out who is winning — can be a mind-numbing exercise.

Months of skirmishes have been fought over who has the right to fight in future skirmishes. Hearings have been held to decide whether other hearings have to be held.

The battle over developing Fort George is really many small battles. Both Fairfield and the Friends of

(See DEVELOPMENT, Page E-5)

Fort George have used every opportunity to file challenges on tiny legal technicalities that stray far from the issue at the heart of the matter — is the development too big for the island?

Much of the confusion can be blamed on the 1983 Amended Development Order for the project — a flawed compromise that was struck when the Department of Community Affairs and the Northeast Florida Regional Planning Council raised complaints about the original order issued by the city in April 1983.

"Really, what they did with that development order was avoid all the hard decisions," said Charles Lee of the Florida Audubon Society, a leading voice for conservation. "What happened as a result is that no agency ever got the opportunity to see all the issues and what impact the entirety of this would have on Fort George."

A development order is supposed to be the end of a process — you get your development order, you start shoveling. But for Fairfield and the Friends of Fort George, the amended order was just the beginning.

The order came with strings attached. The developers had to do exhaustive studies of the water supply, wildlife and plants of the island, then explain how the development would affect them in a massive, 15-volume document — the Master Resource Management Plan.

They also had to submit updates on the plan for each phase of construction, telling where each building would go and what impact it would have. Plus, they agreed to obtain the usual permits from other agencies before a spade of earth could be turned.

And every step of the way, they had to face challenges — from the Friends of Fort George, from environmental groups like the Audubon Society and the Florida Wildlife Federation, and often from state and regional agencies displeased with the job Jacksonville did in regulating the project.

Intentionally or otherwise, those challenges produced the delays that have pushed back Fairfield's start date for construction a dozen times.

Fairfield officials estimate they lose $125,000 every month they hold on to their 757 acres. That has helped drive up their cost estimate for the project by $23 million since 1982 — a price homebuyers will pay if and when any homes are built there.

That, too, is not unusual.

In Flagler County, for instance, a tenacious citizens' group has kept ITT Community Development Corp. hung up in legal challenges to its Hammock Dunes project for nearly four years, even though the developers have won universal praise for designing an environmentally sensitive project.

"The problem is, good intervenors [illegible] that development works on a crisp, clean time schedule and time is money," said Robert Rhodes, general counsel for Disney Development Corp. and a leading expert on Florida's growth laws.

The Developments of Regional Impact process — the state's regulatory regimen for construction projects that affect more than one county — was designed to be a neat, orderly system for assuring a thorough review by all affected parties.

But it also builds duplication into an already taxing system. And it allows those who oppose a development to challenge small pieces of the project, with the ultimate goal of killing off enough little pieces to make the development unworkable.

For instance: Fairfield needed permission from the city Bio-Environmental Services Division, the state Department of Environmental Regulation, and the St. Johns River Water Management District for a plan to dispose of sewage by spraying treated effluent on the golf course.

The plan eventually was turned down, but not before Fairfield spent months designing the system and trying to get approval for it.

"The DRI process was designed to be a slugfest," Nicholas said. "That was the procedure where all the basic decisions were going to get made."

"What has happened," he said, "is that these permitting agencies have allowed themselves to get injected — or have injected themselves — into the basic land-use argument all over again."

Once the development order was signed, no agency could stop the project. The big decision had been made by the Department of Community Affairs — before the environmental studies were done — and all the rest were incremental little approvals to implement the big one.

"The DRI process has really created a problem," said Joseph W. Landers, a Tallahassee lawyer and former DER secretary. "That process puts the Department of Community Affairs and the regional planning council in the posture of having to second-guess all of the other agencies."

The amended development order was supposed to stop that mentality, putting the burden on the developers to prove that Fort George could be developed the way they planned and giving regulatory agencies the power to halt the project in its tracks if qualms arose.

But it just didn't work out that way.

Fairfield already had sunk $6 million into buying the land and hundreds of thousands more into ecolo[illegible] studies and legal fees. They ha[illegible] development order. And stopping the development meant the state had just bought itself an island — a decision only the governor and Cabinet can make.

"Somehow," said James Murley, the former chief of the Community Affairs bureau that regulates large developments, "we got moved into a framework of talking about how to develop rather than whether to develop."

Some think they have an answer — a coordinated, one-stop permit process like DRI was designed to be, in which all agencies air their concerns at the start and agree on what they will and will not allow.

That is one option being discussed by the Environmental Efficiency Study Commission, a panel headed by Landers and charged by state legislators with identifying and eliminating wasteful duplication in Florida's environmental regulations.

Some see a new orientation in Florida government and pronounce it good.

"I think we have moved from an earlier period of saying, 'Let's figure out a way to kill this,' to a period of, 'Let's find a way to help this happen and help it happen within the rules and guidelines,'" said Lewis, who is now head of Disney Development Corp.

In a way, nothing is really new about the Fort George Island story.

Developers want to squeeze the maximum profit out of their land by building as big a development as they can. People who live nearby see their lives being radically altered by an infusion of new neighbors and fight to keep things the way they are.

And government is stuck in the middle, trying to strike the elusive balance between growth and preservation.

"This is a sad evolution because I think it's evidence of the tug and pull that's going to go on in Florida for years," said Don Bayly, head of the city Bio-Environmental Services Division. "We're running out of the good land, and there's going to be a lot of pressure and tug and pull on the marshland.

"Build and grow, build and grow — that's still the old philosophy."

Nicholas said, "Jacksonville has gone through this wrenching, 'How can we grow?' period while all the others were saying, 'My gosh, look at all this uncontrolled growth, this is terrible.'

"Jacksonville looks at a Miami and a Tampa and a St. Petersburg and does not learn from both the good and the bad," Nicholas said. "It gets sort of frustrating, because you want to say to Jacksonville, 'Can't you look? Can't you see?' "

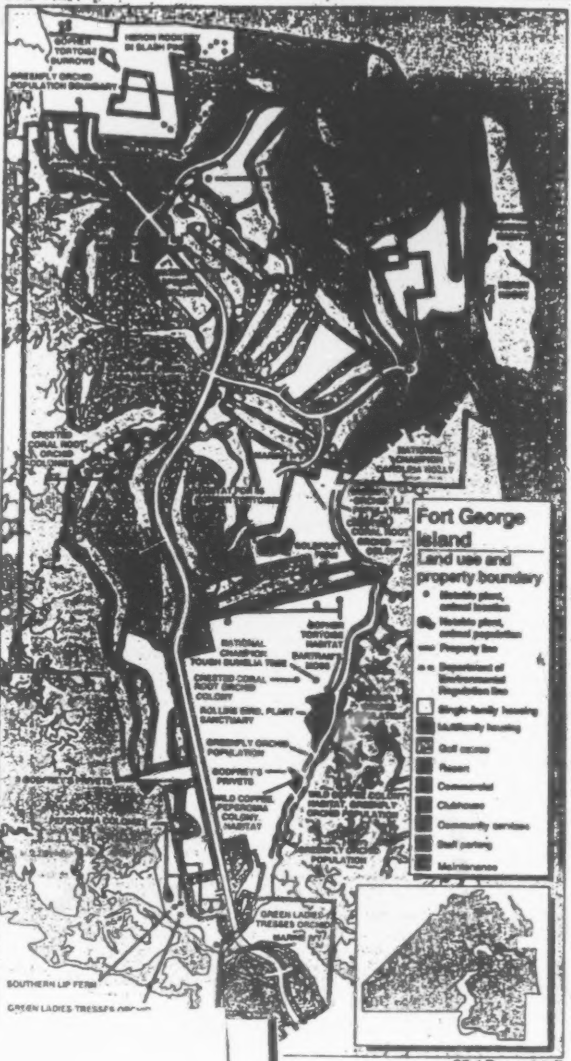
George Willson head of the Florida chapter of the Nature Conservancy Inc., thinks Fort George might have been bought by the state years ago had Jacksonville pushed for state protection and offered money to help pay for the purchase.

"From watching a lot of different parts of the state," Willson said, "I would say — in terms of requesting things to be protected — in Jacksonville the leadership just has not been there."

Sunday
Editorial

The Florida Times-Union/Jacksonville Journal, Jacksonville, Sunday, September 6, 1987

SPECIAL REPORT: THE FIERCE FIGHT OVER [illegible]


Fort George Island
Land use and property boundary
Notable plant, animal location
Notable plant, animal population
Property line
Department of Environmental Regulation line
Single-family housing
Multifamily housing
Golf course
Resort
Commercial
Clubhouse
Community services
Staff parking
Maintenance
GOPHER TORTOISE BURROWS
HERON ROOKERY IN SLASH PINE
GREENFLY ORCHID POPULATION BOUNDARY
CRESTED CORAL ROOT ORCHID COLONIES
NATIONAL CHAMPION TOUGH BUMELIA TREE
CRESTED CORAL ROOT ORCHID COLONY
ROLLINS BIRD, PLANT SANCTUARY
GREENFLY ORCHID POPULATION
GODFREY'S PRIVETS
WILD COFFEE PEPEROMIA COLONY HABITAT
GOPHER TORTOISE HABITAT
GREEN LADIES TRESSES ORCHID
SOUTHERN LIP FERN
GREEN LADIES TRESSES ORCHID

— Clint Reeves/staff

Uncertainty exists about development

Island's inhabitants at center of dispute

Part one of three.

By Beverly Keneagy
Staff writer

The Timucua Indians used to refer to Fort George Island as this "sweet land by the sea."

Their description still fits, but the land is also sweet for modern development.

The island, two miles long and a mile wide, is 17 miles northeast of downtown Jacksonville, far away from the hustle and bustle of city life and traffic.

Something is wrong at Fort George Island — but what depends on whom you ask. Analysis, Page E-1.

The majority of the island remains in a natural state, almost like a little paradise.

Fort George Island has a rich forest, where rare orchids and ferns grow wild in the junglelike vegetation.

Canopied, moss-draped oaks grace the rustic roads that wind through the island and wildflowers grow alongside. Birds, hundreds of them, chatter in the trees, wade in the marshlands and skim along the Fort George River.

Towering above the trees is a 60-foot sand dune known as Mount Cornelia that is the highest coastal dune south of Cape Hatteras, N.C.

History on Fort George Island is as ever-present as the mosquitoes. The island was inhabited more than 2,000 years ago by the forerunners of the Timucua.

Though Fort George Island has been populated for thousands of years, first by Indians and then by other settlers, the island has remained almost unchanged.

The only development has been the 17th century Spanish mission of San Juan del Puerto, several plantation buildings, the narrow roads, a small church, 19 homes, a state-owned plantation, an 18-hole golf course and a club-

(See RESIDENTS, Page A-14)

TUESDAY, SEPT. 8, 1987

house.

But that may soon change.

The island has attracted Fairfield Communities Inc. of Little Rock, Ark. The company wants to turn 657 acres of the 989-acre island into a $200 million high-quality recreational resort.

Trees and shrubs that have grown wild for countless years would be bulldozed to make way for 1,343 homes — a community of 4,000 residents. The development would also have 80,000 square feet of commercial space and would expand the golf course to 27 holes.

During the past six years, Fairfield has been working hard to bring its visions to reality. The project has undergone extensive, unprecedented planning reviews before local and state agencies to prove the island can be developed without harming the environment.

"We are doing an environmentally sensitive development," said Fairfield's attorney, William Hyde of Tallahassee.

"That island can't be developed any better than Fairfield is doing now," he said. "We have gone to extraordinary lengths to protect Fort George Island."

Despite Fairfield's assurances, the island has been the subject of one of the fiercest and longest-running environmental battles in the state.

The development has attracted opposition from numerous island residents, a member of Congress, a state Cabinet member and environmental organizations.

"To go with the type of development they [Fairfield] want to have may well ruin a treasure this state will never be able to rebuild," said Attorney General Bob Butterworth, who has sided with environmentalists in the battle.

Butterworth said he thinks the ecology of Fort George Island is probably second to none in Florida or on the whole East Coast of the United States."

By far, the biggest thorn in Fairfield's side has been the Friends of Fort George Island Inc., an organization formed by some island's residents to preserve the island.

The group is opposed to Fairfield's development because they think the project is too large to avoid harming the environment.

"The island is too delicate to have such a large population," said William E. Arnold Jr., the group's vice president. "It would wreck it. It would be devastated."

The Friends of Fort George said they are concerned about the availability of water for the Fairfield development. The group also said the development would destroy evidence of the island's history and the rare plants and animals that make Fort George Island unique.

The island is home to the state Rollins Bird and Plant Sanctuary, a 70-acre preserve inhabited by the endangered wood stork, black-crowned night heron and gopher tortoises.

Also on the island is the state-owned Kingsley Plantation, which was built in 1791 and is the oldest plantation house in the state.

The plantation was purchased in 1817 by Zephaniah Kingsley, a wealthy slave owner. He operated it as one of the largest and most profitable plantations in the area until his death in 1843. Today, much of the plantation is retained in its original form and is listed in the National Register of Historic Places.

"To many people statewide, Fort George Island is a rare jewel," said Doris Chappelle, the director and secretary of the Friends of Fort George.

Mrs. Chappelle and her late husband, George, moved to the island 29 years ago. They settled at Acres Away, a home built in 1875 for a botanist who introduced plants from China and Japan. Under Fairfield's plans, homes would be built less than 125 feet from her house, in plain view from her screened-in porch.

"The total changing of the environment is what stresses me the most," said Mrs. Chappelle, a retired Duval County schoolteacher.

"It would simply not be the same. The character of the place would change," she said. "I don't quite know how we'll adjust to it."

Mrs. Chappelle said there is so much history on the island that she can't even plant a shrub without digging up shards of Indian pottery. She said she thinks there is no way Fairfield can develop the island without destroying remnants of its history.

Living on the island can be quiet and lonely, but Mrs. Chappelle said she would want it no other way.

"I like it here. It's really a good place to live, if you like country living," she said. "We're 17 miles from anywhere. We've got bugs and snakes. The mosquitoes have always been terrible on Fort George Island."

As a result of the opposition, Fairfield has made a number of changes in its development plans to ease the concerns of the Friends of Fort George and state agencies.

Two marinas were deleted, its golf course was reduced to 27 holes from 36, additional preservation areas were added, and a stormwater retention system was designed to keep polluted water from running into the marsh.

Also, Fairfield was required to conduct a $2 million yearlong study of the island's drainage, terrestrial and wetlands biology and potable water quality and quantity to show the development will not harm the environment.

(2)

"All of the environmental practices that are state of the art today will be put in," said William Peterson, general manager of Fairfield's Fort George Island.

Not all of the island residents are opposed to Fairfield's development.

"This island isn't so unique," said George Register III, who was the chief planner and engineer of the project until he quit in 1984.

"This island's been well-used for hundreds of years, and it's been well-impacted by man for hundreds of years," Register said. "Is it too much of a jewel, too unique that it should be left alone? I enjoy living there too much to tell you that."

The controversy has spurred a second group of island homeowners to organize. They call themselves the Homestead Residents of Fort George Island and are in favor of the Fairfield development.

They said try to envision what could happen to the island if it is not developed by Fairfield. The island could become a trailer park with septic tanks.

"We think of Fairfield as an advantage as opposed to a bunch of developers," said Sherman Baldwin, an organizer of the Homestead group. "We could be left with a lot of developers doing their own thing."

The fewer than 50 residents on the island try to keep the debate under control.

"We've tried to keep it out of the church and the community club," Mrs. Chappelle said. "We try to realize each side has a right to an opinion, even if they are wrong."

The Friends of Fort George have the support of powerful environmental organizations. Those groups include the Florida Defenders for the Environment, the Florida Wildlife Federation and the Florida Audubon Society.

"This is not a local issue," said Charles Lee, vice president of the Audubon. "Once we got into it, we recognized a bigger issue. This is a unique island resource, there's very few of them left in the state.

"The island ought to be acquired by the state or federal government based on its historical value alone, without even getting into the environmental considerations," Lee said. "Every feature you find there is historical."

There are at least 26 known prehistoric and historic sites on Fort George Island. Fairfield will be required to preserve five of those sites.

The remainder of the historic sites will be surveyed by an archaeologist before construction. If any artifacts are retrieved from those sites, they will either be donated to the state or displayed in an interpretative center that may be built in the Fairfield development.

The first Protestant prayer said in North America was said on the island in May 1562 by Huguenot explorer Jean Ribault. At the time, the island was called Allimarani by the Indians, or "sweet land by the sea."

In 1736, Georgia's governor, Gen. James Oglethorpe, visited the island and established a fort along the St. Johns River at Point St. George (present-day Mile Point).

The fortification was known as Fort St. George, from which the island derives its name.

Through the years, many people have attempted to develop Fort George Island, but none has been successful.

In 1975, the island's former major landowner, the Reinhold Corp., proposed building 854 homes. The plan was denied by the Jacksonville Area Planning Board because of concerns about a sufficient drinking water supply and stormwater runoff. The realization that such a paradise could be developed prompted the planning board to sponsor the Fort George Island Carrying Capacity Study. The 1977 study recommended the island be acquired as a park or natural historical preserve.

The city's 2005 plan conducted in 1980 for growth management also recommended the island become a park.

Opponents of the Fairfield development recite these studies often to prove the project is too large for the island.

"Nothing has changed since these studies were completed, the obstacles to development are still there," said Arnold, who has owned property on the island for more than 40 years.

Arnold said his group would prefer the island become a state or federal preserve. If that can't be done, they insist the development be scaled down to single-family residences on large lots.

"Certainly 1,300 units is far too many for that acreage if you are hoping to preserve the natural beauty of the island," Lee said.

Peterson, Fairfield's general manager, downplays the carrying capacity study by saying it limited the island's recommended population based upon the assumption all the residences would use septic tanks.

"It didn't envision how to handle the wastewater," Peterson said.

Fairfield's development will have potable water and a wastewater treatment system that will serve the development and could be expanded to serve the region, he said.

Peterson points out that under the land's previous zoning of open rural, one home could be built on each acre and a half. Therefore, 500 to 600 homes could be built on the island, all with septic tanks, he said.

The land was rezoned in 1982 to planned unit development, which allows up to 10 units per acre.

"The problem is that land, at open rural, could be sold to anyone," said Joe Forshee, a Jacksonville City Council member whose district includes Fort George.

"Anyone could do anything with it, he could cut down every tree. With the restrictions that have been placed on it, there's no way it can destroy the island, it can only enhance it," he said.

One of the key battles over Fort George Island is whether there is enough good water for the additional 4,000 residents the development would bring.

Fairfield thinks there is; the Friends of Fort George thinks there is not.

Members of the group said they are also concerned about the pesticides, herbicides and other pollutants from development that could run off into the sensitive marshlands surrounding Fort George Island. Just north of the island are shellfish harvesting beds that are frequently closed because of high levels of bacteria.

In addition, the Fort George River is an aquatic preserve and has been designated an Outstanding Florida Waterway, affording it a high level of protection.

Based upon those concerns, Fairfield will be required to retain all rainwater from a 100-year storm on the island — 11 inches of rainfall. Meteorologists estimate the chance of such a storm in any one year is one in 100. By comparison, most of the state's developments are required to retain water from a 25-year storm.

Under Fairfield's plans, the rainwater will be retained in 28 acres of golf course fairways and ponds. The water in the ponds will be used to spray irrigate the golf course, meeting 80 percent of the course's water needs.

"There will be no discharge unless it exceeds a 100-year storm," Peterson said. "It's not going to get any worse and there's a good possibility it will enhance the surrounding waters."

The Friends of Fort George challenged Fairfield's stormwater management plan in a state administrative hearing last year, but hearing officer Donald Conn ruled the plan is adequate.

Conn said there will be less pollutants running off into the estuary surrounding the island than under current conditions, meaning there will actually be an improvement in the quality of the water from the island.

Conn also ruled Fairfield's development has an adequate water supply and would have no adverse effect upon the water wells used by the island's existing residents. Fairfield is expected to use up to 443 million gallons of water per year, which would be drawn from 1,300 feet below in the Floridan aquifer. But some residents — and the city Bio-Environmental Services Division — remain unconvinced that all the island's water problems have been ironed out.

Some island residents are fighting the company that wants to build a 1,343-unit development on the island. They fear it will destroy the environment, which includes egrets like the one fishing in a cove (above). William E. Arnold Jr., vice president of the group, walks down a trail on his Fort George property (right).

Residents said, and city reports confirm, the island already experiences low water pressure because of heavy water usage from the nearby Mayport Naval Station and the Seminole Kraft Corp. plant eight miles to the west.

Bio-Environmental Services Chief Don Bayly said Fort George Island already faces serious water problems that could worsen if the island is developed with 1,343 units.

Underneath the northern end of the island is what experts call an anomaly in the aquifer that is at least 500 feet deep and 1,000 feet wide. The anomaly, which is caused by either a sinkhole or fault, allows mineralized saltwater from below to move into the Floridan aquifer and into island residents' wells.

Tests conducted by Bayly's office show that five wells on Fort George Island have chloride levels that exceed state drinking water standards. Water conservation officials have recommended water rationing for the island.

Increased pumping from the water wells — such as Fairfield's watering of the golf course — causes the saltwater to spread into the wells, Bayly said. The amount of saltwater intrusion has increased at an alarming rate over the past three years, city reports show.

Bayly said the anomaly could worsen if the island is developed and there is an increased demand for water from the Floridan aquifer.

"The people who live out there with wells are already impacted, with those Fairfield wells they will be impacted even more," Bayly said.

In addition, the anomaly could spread into Fairfield's water wells.

"It's very possible that their pumping will cause the movement into their [water] zone," said Rick Levin, a hydrologist at the St. Johns River Water Management District in Palatka.

For that reason, the district will require Fairfield to install a monitoring well 550 feet northeast of the development's water wells to detect any saltwater intrusion or decline in water quality.

Peterson said he thinks Fairfield will not affect the island's existing water wells because the development will draw drinking water from the middle zone of the Floridan aquifer, 1,200 to 1,700 feet below the earth's surface. Most of the existing wells are in the upper zone of the aquifer, closer to the surface.

Fairfield officials have told the island's residents that should the saltwater intrusion worsen, the company will connect them to the deep well system.

Opponents also said they are concerned about the longevity of Fairfield's water wells.

Fairfield's water experts have said that based upon a computer model of the aquifer, there should be an adequate water supply for 15 to 30 years.

"Can you justify committing 1,343 units that experts say at best will have a water supply of 30 years?" Audubon's Lee said. "What's going to happen when the water runs out? The taxpayers of Duval County will have to bail them out. By that time, the developer will be gone."

But Peterson said the 15 to 30 years is only a projection.

"It doesn't mean it runs out," he said. "After 30 years, we'll come up with a contingency program. Who knows what will happen. In 30 years, there could be [water and sewer] lines out here by th[illegible]"

One possibility could be reverse osmosis, a process similar to desalinization in which water below state water quality standards is filtered for the removal of pollutants and made potable.

Water is not the only concern of the Friends of Fort George. Members said the rare plants and animals on the island would be adversely affected by the new homes and residents that development would bring.

Fairfield has estimated that during construction, 1 million cubic yards of dirt will be moved on the island. Arnold said he thinks the bulldozing will displace the island's fragile plants and wildlife.

"They're going to die," Arnold said. "There'll be no place for them to go."

Donald Blake, a Jacksonville botanist who visits Fort George Island frequently, said the island has a rare plant community because of the large number of oyster shells in the upper earth. The island has many tropical plants that are more likely to be found in the Bahamas and West Indies, not northern Florida, he said.

Blake, who has worked in the horticulture departments of Duke University, the University of Georgia and the University of Florida, predicts the development of the island will kill the 10 species of orchids found on the island, all of them rare.

"Most of them would be extinct in very few years, they would disappear," Blake said. "The development of Fort George Island will be the demise of the orchids and other plants, too."

Changing the island's native environment would create more urbanized plants and animals, he said. For example, weeds would grow where there were once rare orchids and wildlife would be replaced by dogs and cats, he said.

In agreement is another ally of the Friends of Fort George, Rep. Charles Bennett, D-Fla., who is

(From Page A-14)

sponsoring legislation that would add the wetlands surrounding the island to a federal preserve.

"This [development] will visibly change the nature of the island from an ecological preserve to one which will be like an average suburban subdivision," said Bennett, whose district includes Fort George.

"It would change it from sort of an enclave of protection to a typical suburban development. Instead of having white-billed woodpeckers — which are very rare and sometimes come there — you will have sparrows."

In addition, the Friends of Fort George [illegible] they think the removal of the island's shrubs and canopied trees would change the island's climate, exposing the island's plants and animals to a wider range of temperatures.

"You are going to see a depopulation of the number of bird species on the island," said Segundo Fernandez, a Tallahassee attorney who represents the Friends of Fort George. "When you clear [land], you affect the climate, there's different light conditions and wind conditions."

Still an issue in the battle between the group and Fairfield is how much buffer land should be left between the resort and the nature areas.

The group said it thinks it should be 201 contiguous acres, but said Fairfield's plans have far less and it is fragmented.

"An animal can't run across a golf course, a road or a yard to get to those [buffer] strips," Arnold said. "It's no good for wildlife habitat."

Peterson estimates Fairfield has 160 to 170 contiguous acres around the golf course fairways as a buffer, but two of those fairways intrude into the buffer areas. Much of the island's existing shrubbery and trees will remain as natural buffers.

"It's more adequate here than you'll find in any other development in Northeast Florida," Peterson said. "Any time there's development, you have to move trees and displace some animals."

As for the birds on the island, Hyde agrees there may be a reduction in the numbers, but not in the species.

"If you clear land, it'll definitely have an effect to some degree, maybe a reduction in the bird population," he said.

Fairfield has conducted a 12-month study of the climate conditions on Fort George Island to prove that its development will not affect the climate in the Rollins Bird and Plant Sanctuary. Buffers will be left between the sanctuary and the development, Peterson said.

To address the environmental concerns, Fairfield plans to employ a resource manager who will oversee the preservation of the island's plants during construction.

Still, the Friends of Fort George are convinced the Fairfield development, no matter how environmentally sensitive it claims to be, would destroy their tiny, unique island.

"I don't see how it could possibly work," Mrs. Chappelle said. "It would change this historic site into something that has been duplicated up and down the coast. What's planned here is not unique. This island is."

Florida Times Union 9-4-87

Fort George Island was not given special treatment

An Aug. 18 article by staff writer Frank LoMonte entitled "Martinez recommends exemption for island" contains some misleading information and some inaccuracies. The story was published even though no effort was made to contact either the governor's office or the Department of Community Affairs to verify the information.

I would like to set the record straight.

The headline and the story state that Gov. Bob Martinez recommended that Fort George Island be excluded from the federal Coastal Barrier Resource System. That is misleading because, by focusing on Fort George Island, the story and headline make it appear that the governor singled out Fort George Island for special treatment.

In fact, the governor's letter to U.S. Interior Secretary Donald Hodel regarding the Coastal Barrier Resource System made no reference to Fort George Island. The letter recommended that all areas subject to an approved Development of Regional Impact development order as of Jan. 1 be exempted from the system.

The statement in the story that the governor based his recommendation on the advice of Thomas G. Pelham, secretary of the state Department of Community Affairs, is incorrect. Pelham, in his letter to the governor regarding the Coastal Barrier Resource System, stated: "DCA will not address the appropriateness of including portions of Fort George Island in the CBRS."

Martinez made it clear that the statements in his letter to Hodel were based on recommendations from the Office of Planning and Budgeting.

The story conveys the impression that the DRI policy was developed by Pelham. This, also, is incorrect. The recommendation regarding the exclusion of DRIs from the Coastal Barrier Resource System was first advanced by the previous state administration, before either Martinez or Pelham took office.

Furthermore, the DRI recommendation will not apply to Fort George Island because that project no longer is a Development of Regional Impact. Consequently, it no longer is eligible for exemption from the Coastal Barrier Resource System under the DRI exclusionary recommendation.

The recommendation that DRIs be exempted never was intended to benefit Fairfield Communities Inc., the developer of the proposed project on Fort George Island that is the thrust of the Times-Union story. The recommendation is intended to recognize the DRIs, because of their superior planning, already have mitigated their adverse impacts. Thus, Coastal Barrier Resource System protection would be redundant.

Gov. Bob Martinez

Although the article stated that Pelham refused to comment, the Times-Union reporter did not seek any comment from the secretary nor from any other department official prior to writing his story. If LoMonte had contacted the department, he would have been aware of the inaccuracies in his article prior to publication.

RICHARD MORGAN,
director of communications,
Department of Community Affairs,
Tallahassee

St. Petersburg Times

9-2-87

The governor on Fort George

Editor: Re: *Caution flags fly at Fort George,* Aug. 24.

As you know, I recently wrote a letter to Secretary Hodel of the Department of Interior in which I made recommendations concerning the identification of lands for exclusion from the scope of the Coastal Barriers Resources Act (CBRA). In my letter I stated that projects which were involved in the development of regional impact (DRI) review process as of Jan. 1, 1987, should be excluded from the ambit of CBRA. This decision was predicated on the belief that DRI's have mitigated their adverse impacts through superior planning, thus making CBRA protection redundant.

Having given considerable thought to my position with respect to CBRA, it was with dismay that I recently read an editorial in your newspaper criticizing my letter to Secretary Hodel. You stated that my letter unduly benefited the developer of a DRI on Fort George Island and placed in jeopardy the natural resources of that island. In addition, questions were raised concerning the role of the secretary of the Department of Community Affairs, Tom Pelham, in the formulation of that policy.

In response to your editorial, I would point out that my action in suggesting CBRA exemptions for DRI's is a logical expression of policy that began to appear under the previous administration. Further, the policy is applicable to developments on a statewide basis. Despite the implication of your editorial, the development on Fort George was not singled out for special treatment, nor was it even mentioned in my letter. Moreover, while I received recommendations from the Department of Community Affairs concerning CBRA exemptions, the recommendations intentionally omitted any mention of Fort George Island. Ultimately, the statements in my letter to Secretary Hodel were based on recommendations from my Office of Planning and Budgeting, which were approved in whole by me.

Because I had recently learned that the developer of Fort George was attempting to withdraw its project from DRI review, I directed staff to determine how the broad policy statements made in my letter should be specifically applied to the project. This my staff did, and the developers of Fort George will not enjoy any special benefits by virtue of their abbreviated participation in the DRI process. It is not my intent to allow developers to participate in the CBRA exemption for DRI's if they withdraw their projects from the DRI review process.

I trust that I have been able to correct any misperceptions about the intent of my letter to Secretary Hodel. I believe that in better understanding one another we will often find that our goals are similar, and that through our complementary efforts we can realize those goals.

Bob Martinez, governor

Editor's note: Letters expressing similar sentiments were received from Richard Morgan, director of communications, Department of Community Affairs, Tallahassee, and William L. Hyde, attorney for Fairfield Communities, Inc., Tallahassee.

The Tampa Tribune 9-1-87

'Developers' claim to land questioned

By MICHAEL MOLINE
of United Press International

TALLAHASSEE — Attorney General Bob Butterworth said Monday the company behind a controversial development planned for Fort George Island has claimed nearly twice as much marshland as the state originally alleged.

State officials had previously challenged the claim by Fairfield Communities Inc., to 100 acres of marshland also claimed by the state on the barrier island in northeast Jacksonville. Now Butterworth says the acreage might total about 191 acres, including some land improperly filled during the 1960s by previous owners.

The attorney general also says Fairfield needs the permission of the governor and Cabinet to build a bridge planned for the development. The filled land amounts to 46 acres where Fairfield plans a "utility center" including shops, waterworks, a sewage plant, parking lots and sales office, Butterworth said.

Butterworth said an investigation by his office and the Department of Natural Resources turned up records indicating the additional 91 acres might really be sovereign submerged lands that belong to the state. Fairfield's development plans for a 1,343-unit residential and retail complex are based in part of its assumption of ownership.

The state has been pursuing its claim to the disputed land in Duval County Circuit Court. The Attorney General's Office filed papers Monday expanding its claim to cover the additional 91 acres.

"If Fairfield is unable to meet its legal burden to prove it owns this land, then it is clear that the local approval of the project was based on a significant amount of misinformation," Butterworth said in a prepared statement.

Fairfield has been trying to develop 757 acres on the island since 1982, but the project has been sidetracked by lawsuits filed by the state, small property owners and environmentalists who fear damage to the island's fragile ecology.

The island is home to rare species of birds and plants, and Butterworth has joined efforts to have it declared a state or national preserve. The Florida Wildlife Federation proposed Monday the Fairfield property be purchased under the state Conservation and Recreational Lands program.

The federal government also was considering restricting use of federal funds for improvements on barrier islands including Fort George, and withholding flood insurance to discourage development.

Fairfield won a round one week ago, when John Radey, an independent counsel appointed by Gov. Bob Martinez, determined the state has no authority to interfere with local development decisions. But Butterworth flatly contradicted Radey's opinion later in the week, and the question was by no means resolved.

William Hyde, a Tallahassee lawyer representing the Arkansas developer, said Fairfield has offered to donate the disputed land to the state, including uplands near an existing preserve, but the state never responded.

Hyde accused Butterworth of engaging in a "vendetta" against Fairfield, raising spurious legal problems to force Fairfield to scale down the project or abandon it altogether. He said the attorney general's attitude is "we're going to throw more and more stuff" at the developer and "some of it might not stick to the wall, but we're going to keep doing it."

"He is not willing to sit down and discuss the issues with us," Hyde said. "It's a very frust[illegible] thing."

The Orlando Sentinel, Tuesday, September 1, 1987

Fort George Island fight heats up

Butterworth expands land complaint

ASSOCIATED PRESS

TALLAHASSEE — Attorney General Bob Butterworth has expanded a complaint against an Arkansas developer, saying the company owns nearly one-fourth less land on Fort George Island than it had claimed.

Butterworth said the amended title complaint charged that Fairfield Communities Inc. has failed to prove it owns 191 acres of submerged and unlawfully filled land.

The original complaint said Fairfield had failed to prove its ownership of 100 acres of submerged land.

Fairfield wants to build a 1,343-unit housing development on the island, which lies at the mouth of the St. Johns River in Jacksonville. In winning local approval to build the development, Fairfield said it owned as much as 770 acres on the island.

An attorney representing Fairfield accused Butterworth of playing "political shenanigans" and said the amended complaint was just a legal attempt to drag out the process and force Fairfield to give up its plans for the development.

"Fairfield can't walk away from this project," said attorney William Hyde. "It has invested, I think, $13 million in it."

Despite meeting tough criteria and getting necessary permission to build the development, the project has been delayed at least five years, Hyde said.

"They're evidently trying to make things as difficult as possible," said Hyde, who has asked Butterworth to stay out of the dispute because of his publicly stated opposition to the project.

Butterworth contends that any submerged land below the mean high waterline is presumed to belong to the state and the people of Florida. Fairfield claims to own 100 acres of submerged land, he said.

In addition, Butterworth said Fairfield has claimed land created by an unlawful fill in the 1960s and has not obtained necessary permission from Gov. Bob Martinez and the Cabinet for a proposed bridge.

Hyde said Butterworth now is claiming upland property that belongs to Fairfield as being sovereign land.

Hyde said a hearing had been scheduled Wednesday in circuit court in Jacksonville on the state's original title complaint. Hyde said he had intended to ask a judge to dismiss the complaint, but he said there was little use in going to a hearing now that the complaint had been expanded.

According to Butterworth, the scope of the project depends on Fairfield's being able to prove ownership of all the land it originally claimed.

Hyde disputed that statement.

"[It] will be no different if we own the lands or if we don't own the lands," he said.

The Florida Times-Union, Jacksonville, Tuesday, September 1, 1987

State expands claim to submerged land at Fort George Island

By Beverly Keneagy
Staff writer

Attorney General Bob Butterworth expanded a state lawsuit yesterday against the developer of a proposed housing project on Fort George Island, saying the state owns more submerged lands around the island than originally thought.

The original lawsuit filed in May said the state owns 100 acres of marshland around the island. The amended complaint says that the state owns 91 additional acres of submerged lands around Fort George Island, for a total of 191 acres.

The development company, Fairfield Communities Inc., thinks it owns the land, which has been included in calculations related to the number of homes allowed under density restrictions.

If Fairfield fails to prove it owns the submerged lands, the size of the 1,343-unit development may have to be re-calculated and reduced, Butterworth said. In winning local approval for the $200 million development, Fairfield said it owned 770 acres.

"If Fairfield is unable to meet its legal burden to prove it owns this land, then it is clear that the local approval of the project was based on a significant amount of misinformation," Butterworth said in a prepared statement.

If there is a substantial change in the acreage of the project, Fairfield may have to submit new development plans to local and state planning agencies, which could be a time-consuming process.

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Under Florida law, submerged land below the mean-high-water line is presumed to be owned by the state, Butterworth said, unless a claimant can prove otherwise.

The state's amended complaint also alleges that 46 acres Fairfield claims to own were illegally filled in the 1960s, meaning they are also state property. Fairfield did not own the property at the time.

In addition, he said Fairfield has failed to obtain an easement from the governor and Cabinet in order to build a bridge in the Fort George Island development.

Fairfield's attorney, William Hyde, said the company has land grants from the island's previous land owners and federal government documents to prove that they own the submerged lands.

State expanding its claims to Fort George Island land

In addition, Fairfield officials say they have been paying property taxes on the disputed lands.

In another development yesterday, the U.S. Geological Survey in Jacksonville said that tests conducted recently of Fort George Island's drinking water wells showed that some wells had high levels of salt-water intrusion.

State drinking water standards allow up to 250 milligrams of salt per liter. The federal tests showed the wells measured at 280, 270 and two of them at 250.

The results were similar to tests that were previously conducted by the city Bio-Environmental Services Division, which received measurements of 354, 336, 330, 300, 290 and 250.

However, the tests were assailed by Fairfield, and the city asked the U.S. Geological Survey office and the St. Johns River Water Management District in Palatka to conduct their own tests. Water management district officials said yesterday their test results are not complete.

Gary Weise, the city's water manager, said health officials are waiting until all the water-quality tests have been completed before considering what action to take. Weise originally recommended mandatory water rationing on the island, but officials now seem reluctant to consider that proposal.

When the city rezoned the property in 1982, Fairfield agreed that if its water use adversely affected the existing island's residents, it must reduce its usage or provide other mitigation.

Fairfield's 18-hole golf course is the largest consumer of the island's well water.

Front Page article

BOB BUTTERWORTH
ATTORNEY GENERAL

Diane

News Release

Office of Attorney General, The Capitol, Tallahassee, Florida 32399-1050

August 31, 1987
FOR IMMEDIATE RELEASE

Contact: 487-0984

MORE FAIRFIELD LAND CLAIMS CHALLENGED

TALLAHASSEE -- Attorney General Bob Butterworth today expanded the state's quiet title complaint against Fairfield Communities Inc. of Little Rock, Ark., concerning the firm's claims of certain lands for a development on Fort George Island in Jacksonville.

Butterworth said the amended complaint charges that Fairfield has failed to prove its ownership of even more submerged land below the mean high water line than originally thought. Under Florida law, submerged land below the mean high water line is presumed to be sovereignty land owned by the state unless a claimant can prove otherwise.

In addition, Butterworth said, the amended complaint alleges that Fairfield has claimed for a development "utility center" land created by unlawful fill in the 1960's and has failed to obtain necessary permission from the Governor and Cabinet for an announced bridge.

The attorney general said the filled parcel is approximately 46 acres. Unless Fairfield can document otherwise, this formerly submerged parcel would also be owned by the people of Florida, he said. Fairfield's master land use plan map designates the filled area for use as a utility center for the proposed development, including a convenience store, retail shops, waterworks, waste water treatment or sewer plant, parking lots, an information center, a sales office and other structures.

The original complaint filed against Fairfield in May challenged the corporation's claims to approximately 100 acres of submerged land. Butterworth said the amended complaint, based on an investigation by his office and the Department of Natural Resources, has expanded that figure to approximately 191 acres of submerged and unlawfully filled land. In winning local approval for the 1,343-unit development, Fairfield claimed title to as much as 770 acres.

"If Fairfield is unable to meet its legal burden to prove it owns this land, then it is clear that the local approval of the project was based on a significant amount of misinformation," Butterworth said.

(more)

Butterworth noted that Fairfield itself has openly declared its intention to press its claims to the disputed land for the purposes of obtaining "all necessary development approvals" and for "calculating the allowable density" of the project.

Citing the firm's Department of Environmental Regulation permit application, the amended complaint states that Fairfield has proposed to construct a bridge across sovereign submerged lands but has yet to obtain the required easement to do so from the Governor and Cabinet.

The amended complaint was filed in Duval County Circuit Court in Jacksonville by Assistant Attorney General Lee Rohe. The complaint seeks a quiet title judgment and a permanent injunction enjoining Fairfield from asserting its claims to the sovereign lands.

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(For additional information, please contact
Deputy Attorney General Jim York at 904/487-1963.)

Florida Times Union 7-21-87

Butterworth, Bennett unite on Fort George park plan

By John Burr
Capital bureau

TALLAHASSEE — Florida Attorney General Robert Butterworth said yesterday that he will work with Rep. Charles Bennett to have Fort George Island preserved as a state or federal park.

Speaking against plans for a $200 million residential development on the Jacksonville island at the mouth of the St. Johns River, Butterworth said he will "do everything I can as a Cabinet member to have the island considered for state purchase."

"We're buying lands now that are not nearly as environmentally sensitive or as historically significant as this island. Beyond all doubt, it is one of the most unique sites left undeveloped in the state."

Butterworth and Bennett are reacting to a proposed city ordinance that would push forward the 1,343-unit development by Fairfield Communities Inc. The bill would strip state planning jurisdiction over the development and hand it back to the city.

The ordinance is the brainchild of former city General Counsel Dawson McQuaig, who is in private practice representing Fairfield, according to William Hyde, an attorney based in Tallahassee for Fairfield. The bill is expected to be taken up tomorrow by the City Council Urban Affairs Committee.

McQuaig could not be reached yesterday for comment.

Butterworth said he would have his staff check the legality of the city removing a development from scrutiny required by state law.

(See FORT, Page A-4)

Urban Affairs Committee Chairman Joe Forshee said he does not remember who sponsored the bill.

"We've had four meetings on it and I have no problems with it," Forshee said.

Bennett, D-Jacksonville, sent telegrams to all city council members Friday, asking them to allow "the federal and state governments to make a proposal for the acquisition of Fairfield's interest to preserve by state or federal parks these ecologically valuable lands."

Bennett said yesterday: "If they [Fairfield officials] start cutting trees and putting in roads, it would not be attractive as a state or national park, in my opinion. As it now stands, it has potential as a real jewel in the national park system."

Bennett acknowledged that Fairfield officials rejected an earlier offer to sell their land to the federal government.

Robert Butterworth
Says island a unique site

Fort George project to be team effort

A bill that would include Fort George Island in a federal preserve is expected to pass the U.S. House today. The bill, sponsored by Bennett, would not harm Fairfield's development scheme.

Hyde says the company merely wants to start its construction project.

"We've been delayed five years. We're tired of the delays, tired of being harassed at every step of the way," he said. "We want to return responsibility for oversight of the project to the city of Jacksonville, where it belongs."

The Jacksonville Planning Commission approved the project in January 1986. But since then it has been bogged down in administrative and legal challenges brought on by a citizen's organization and several environmental groups.

Hyde argued that the residential development should not be subject to tough scrutiny by state planning agencies. State planning laws changed in 1985, three years after Fairfield proposed the development. Under the new law, the project is not large enough to require planning approval from state agencies, he said.

"I don't know at this point if they can do that," Butterworth said about the prospect of the project being removed from state review. "The way its been handled so far is that any project that was in the pipeline before the law changed in 1985 will stay with state review."

Front page Article

9-16-87
Florida Times-Union

Supports efforts to save island from development

I have read with great interest the articles in the Times-Union regarding the fierce fight over Fort George Island. First, I want to compliment the staff writers of the Times-Union for the fine journalistic reporting in giving both sides of the issue.

If you ask me, and nobody did, I would say that it was a ludicrous idea for Fairfield Communities Inc. to attempt to crowd 1,343 dwelling units on 950 acres of environmentally sensitive Fort George Island of which 191 acres are delicately balanced marshlands.

Fort George Island doesn't deserve to have the traffic, the pollution, the salt intrusion into the wells and the rape of the land that 1,343 dwelling units could invoke on this fragile island.

Fort George Island should be retained in its present state perpetually for the sake of our children and their children. Money isn't everything.

What to do? The island lands should be purchased by the state or the federal government and made into a state or national park.

Attorney General Robert Butterworth and the Friends of Fort George Island should be commended for their stand on this important environmental issue and should be supported in their efforts.

JAMES E. FULGHUM, M.D.
Jacksonville

Florida Times Union 9-16-87

Forshee has double duty on project

By Dave Roman
Staff writer

As chairman of the City Council Urban Affairs Committee, Joe Forshee has spent the past three months shepherding a bill designed to strip the state of control over a Fort George Island development.

His committee introduced the proposed ordinance that would benefit Fairfield Communities Inc., by allowing the company to build a 1,342-unit development on the island without undergoing the state reviews that were required when the development was first proposed in 1982.

But Forshee has another interest in Fairfield's Fort George Island project.

As director of sales for Gray's Guard Service Inc., Forshee obtained a contract with Fairfield in 1985 to provide security at the company's Fort George Island golf course and at another Fairfield development in Ponte Vedra Beach.

Gray's has paid Forshee nearly $48,000 over the last three years. That almost equals his council income of $52,000 during the same period.

Forshee, who consistently has supported the Fairfield development in council votes, said his employment with Gray's presents no conflict of interest with his council role.

Official says no conflict in project work

(From Page A-1)

"I don't see why it would be a problem because I didn't get the [Fairfield] business per se," the councilman said yesterday. "I think it was handled by one of my salesmen, but I'm not passing the buck. It was under my responsibility."

However, Jimmy Gray, president of the security firm, said it was Forshee who secured the contract for the golf course.

Forshee said he asked the City Council's legal staff for a ruling on whether he had a conflict of interest before voting on the project.

"I cleared that with [former legislative counsel] Mr. [James] Robinette, and he said there was no problem," Forshee said. "I checked this out a long time ago."

Robinette said Forshee approached him with the question five weeks ago, on Aug. 5.

Robinette, who has since resigned from the council staff, was contacted yesterday in Springfield, Mo., where he is visiting. He said Forshee asked him if he thought Forshee's employment with Gray's presented a conflict just before an Aug. 5 meeting of the Urban Affairs Committee when the bill to strip state control of the Fort George project was considered.

"I felt he didn't have a conflict," Robinette said.

Forshee has not asked the state Ethics Commission for a ruling.

Forshee's request came after years of supporting Fairfield's development efforts and at the same time that ties to Fairfield by former city officials came under scrutiny.

Fairfield's actions at City Hall have been under investigation by state and federal authorities for about two years.

Last week, former city General Counsel Dawson McQuaig was indicted by a Duval County grand jury on three conflict-of-interest charges in connection with the legislation now before Forshee's committee.

McQuaig, who supervised the city's legal work affecting the controversial Fort George project, wrote the bill on behalf of Fairfield to remove the project from state control. He also represented the company before the council.

McQuaig was charged under a municipal ordinance that prohibits former employees from acting as an attorney or agent for anyone other than the city in any matter in which the employee had a direct or substantial interest in or in which he participated substantially while in government service.

Last month, Henry Stout, a former mayoral aide and council staff director, was convicted on charges that he lied to a federal grand jury when he denied pressuring the city Bio-Environmental Services Division to drop its opposition to the Fairfield project and when he said he did not know that attorney Thomas H. Greene represented the developer until two years after the developer applied to rezone property on the island.

Also last month, Rodney Hurst, a former councilman and Urban Affairs Committee chairman, was indicted on a charge that he lied to the federal grand jury when he denied knowing that Greene represented Fairfield.

Billy Arnold, a spokesman for Friends of Fort George, a citizens group that opposes the Fairfield development on the grounds it will destroy the fragile environment there, said the link between Forshee and Fairfield troubles him.

"He is doing everything he can for Fairfield and always has," Arnold said.

Jimmy Gray said he hired Forshee because "he knows a lot of people around town."

Forshee insists that he has no conflict. He is paid a salary and gets no commission from any contracts, he said.

"It's not a conflict because I don't own any part of the company and I don't get any monetary value out of the contract," he said. "It doesn't mean anything to me dollarwise."

Forshee, whose council district includes Fort George Island, said he supports the Fairfield development because it is a good project not because of Gray's contract to provide security service.

front pa

RULES OF THE ADMINISTRATION COMMISSION
MODEL RULES OF PROCEDURE
CHAPTER 28-5
DECISIONS DETERMINING SUBSTANTIAL INTEREST

PART II
FORMAL PROCEEDINGS

28-5.201 Initiation of Formal Proceedings.

(1) Initiation of formal proceedings shall be made by petition to the agency responsible for rendering final agency action. The term petition as used herein includes any application or other document which expresses a request for formal proceedings. Each petition should be printed, typewritten or otherwise duplicated in legible form on white paper of standard legal size. Unless printed, the impression shall be on one side of the paper only and lines shall be indented.

(2) All petitions filed under these rules should contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name and address of the petitioner or petitioners, and an explanation of how his/her substantial interests will be affected by the agency determination;
- (c) A statement of when and how petitioner received notice of the agency decision or intent to render a decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as the rules and statutes which entitle the petitioner to relief;
- (f) A demand for relief to which the petitioner deems himself entitled; and
- (g) Other information which the petition contends is material.

*****

A petition may be denied if the petitioner does not state adequately a material factual allegation, such as substantial ~~interest in the agency determ~~ination, or if the petition is untimely. (Section 28-5.201(3)(a), FAC)

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO. 87-5781-CA

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND, STATE OF FLORIDA,

Plaintiff,

vs.

FAIRFIELD COMMUNITIES, INC.,
an Arkansas, Corporation,

Defendant.

NOTICE OF FILING FIRST AMENDED COMPLAINT

NOTICE IS HEREBY GIVEN that, pursuant to Rule 1.190(a) and the Defendant not having filed a responsive pleading to the original Complaint, Plaintiff hereby files its First Amended Complaint . Plaintiff's First Amended Complaint is attached hereto.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-Delivery to : William Hyde, Esquire, Roberts, Baggett, LaFace & Richard, 101 East College Avenue, Tallahassee, Florida 32302, this 31st day of August, 1987.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

Lee R. Rohe
LEE R. ROHE
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
Environmental Litigation Section
The Capitol, PL01
Tallahassee, Florida 32399-1050
(904) 488-1963

Counsel for Plaintiff

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO. 87-5781-CA

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND, STATE OF FLORIDA,

Plaintiff,

vs.

FAIRFIELD COMMUNITIES, INC.,
an Arkansas Corporation,

Defendant.

______________________________/

FIRST AMENDED COMPLAINT

PLAINTIFF, BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, STATE OF FLORIDA, sues the DEFENDANT, FAIRFIELD COMMUNITIES, INC.., and alleges as follows:

COUNT I

1. This is an action to quiet title to sovereign lands in Duval County, Florida, pursuant to Chapter 65, Florida Statutes, and for injunctive relief. This court has jurisdiction pursuant to Section 26.012, Florida Statutes, and Article V, Section 5(b) and 20(c)(3), Florida Constitution.

2. Venue lies in Duval County where the subject property of this action is located.

3. Plaintiff is the Board of Trustees of the Internal Improvement Trust Fund, an agency of the State of Florida under Section 253.001, Florida Statutes.

4. Defendant is a corporation organized within the State of Arkansas and licensed to do business within the State of Florida.

5. Pursuant to Section 253.002, Florida Statutes, the Division of State Lands housed within the Department of Natural Resources performs all staff responsibilities regarding the administration of lands vested in the Plaintiff.

6. Plaintiff holds title to, in trust for the public, all submerged lands underlying the navigable waterbodies of the Atlantic Ocean, St. Johns River, Ft. George Inlet, Ft. George River and Sisters Creek as sovereign submerged lands.

7. In addition to those sovereign submerged lands described within paragraph six above, Plaintiff holds title to all other submerged lands, including the tidelands or tidal marsh below the mean high waterline, immediately surrounding the island of Ft. George, as part of those lands underlying the above-mentioned navigable waterbodies and the confluence of said navigable waterbodies.

8. Plaintiff also holds title to certain illegally filled sovereign lands, formerly submerged, lying at the southern tip of Ft. George Island now above the mean high waterline. Said lands were filled, without knowledge or authorization by Plaintiff, sometime during the mid-1960's.

9. Plaintiff deraigns its title to said sovereign lands, both submerged and filled, lying offshore and contiguous with Ft. George Island, by operation of law through the Act of Congress admitting Florida to the Union, 5 U.S. Stat. 742, the Equal Footing Doctrine, Article X, Section 11 of the Florida Constitution and Section 253.03(1)(b), (d) and (e), Florida Statutes.

10. The lands which are the subject of this suit, both submerged and filled, are more particularly described within Exhibit I attached herein. Plaintiff is the owner, in trust for the public, of fee simple title to the lands described within Exhibit I.

11. Plaintiff has not heretofore alienated, granted, leased or otherwise transferred title or possession of the lands described above.

12. The Defendant, through certain Master Land Use Plan Maps filed with the City of Jacksonville and the Northeast Regional Planning Council, has depicted its ownership upon said maps as encompassing the aforesaid sovereign lands described herein. A copy of one of Defendant's Master Land Use Plan Maps is attached herein as Exhibit II.

13. By letter of March 24, 1987 to the Attorney General of Florida, Defendant has refused to immediately relinquish its claim in derogation of Plaintiff's and the public's sovereign title to the lands which are the subject of this suit. Moreover, Defendant has openly declared its intention to claim said sovereign title for purposes of obtaining "all necessary development approvals" and for "calculating the allowable density" of Defendant's housing development project. A copy of Defendant's letter is attached herein as Exhibit III.

14. By virtue of Defendant's Master Land Use Plan Map, attached herein as Exhibit II, Defendant wrongfully seeks to incorporate said illegally filled sovereign land (as described within paragraphs eight and ten) into its development project as a "Service Center" for the purpose of constructing thereon certain improvements including, but not limited to, a convenience store and other commercial retail shops, a waterworks, wastewater treatment plant and/or sewer plant, parking lots, storage facilities, entrance roads, real estate sales and marketing offices, an information center, maintenance structures and "a property owners' multi-use facility." Defendant's "Service Center" is designated in Exhibit II as Pods TT, UU, and VV.

15. By virtue of Defendant's Department of Environmental Regulation (DER) and Corps of Engineers (COE) permit application, application numbers 161329592 and 871PP-20359, Defendant also proposes to construct a bridge across the Plaintiff's aforesaid sovereign submerged lands located at Haulover Creek within Government Lot 6, Section 19, Township 1 South, Range 29 East. Further, Defendant has not sought a submerged lands easement from the Plaintiff for the construction of its bridge as required under Section 253.77, Florida Statutes, and Ch. 18-21.010, Florida Administrative Code. DER's Intent to Issue and the COE's application are attached hereto as Composite Exhibit IV.

16. Defendant claims said submerged and filled sovereign lands by some claim of right in title or interest unbeknown to Plaintiff.

17. The said claims of Defendant against Plaintiff are wrongful, in derogation of sovereign title, and constitute a cloud upon, and misappropriation of, the public's and Plaintiff's lands.

18. Plaintiff is in doubt as to its rights and liabilities under the above alleged facts.

WHEREFORE, Plaintiff, BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, demands judgment for:

A. That fee simple title be quieted in the Board of Trustees of the Internal Improvement Trust Fund, State of Florida, to the submerged and filled lands surrounding Ft. George Island as more particularly described in Exhibit I herein.

B. A permanent injunction enjoining Defendant from claiming any right, title, use or occupation of the sovereign submerged and filled lands which are the subject of this suit.

C. That all claims and alleged interests of Defendant be declared null and void and forever discharged.

D. That costs will be taxed as this court deems necessary and proper.

COUNT II

1. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

2. Plaintiff realleges paragraphs one through eighteen.

3. Under Article X, Section 11, of the Florida Constitution, Section 253.03, Florida Statutes, and Section 177.28, Florida Statutes, the boundary between Defendant's uplands and Plaintiff's sovereign submerged lands is the mean high water line.

4. Plaintiff holds title to all those lands described within Exhibit I, attached herein, which lie waterward of the mean high water line of Ft. George Island. Plaintiff also holds title to those formerly submerged lands, now filled, lying below the prefilled, original mean high water line of Ft. George Island and Batten Island as described within Exhibit I.

5. Defendant claims by some right of title or interest lands which lie below the mean high water line of Ft. George Island and lands, now filled, which were once below the mean high waterline.

6. Defendant claims as the waterward boundary of those lands described within Exhibit I a boundary other than the mean high water line of Ft. George Island.

7. Defendant's boundary, as claimed, lies waterward of the mean high water line of Ft. George Island.

8. The Defendant has the burden of proof with regard to establishing any boundary, other than the mean high water line, of Ft. George Island as a boundary of its claimed lands.

WHEREFORE, Plaintiff, BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, demands judgment for:

A. A declaratory judgment that the boundary which demarcates Defendant's uplands from Plaintiff's sovereign submerged lands is the mean high water line of Ft. George Island.

B. A declaratory judgment that the boundary which demarcates the filled land described within paragraphs eight and ten is the original mean high waterline as it existed prior to the illegal filling of Plaintiff's formerly submerged lands.

C. That costs will be taxed as this court deems necessary and proper.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

Lee R. Rohe
LEE R. ROHE
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
Environmental Litigation Section
The Capitol, PL01
Tallahassee, FL 32399-1050
Phone: (904) 487-1963

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand-delivery upon Mr. William Hyde, Attorney at Law, Roberts, Baggett, LaFace & Richard, 101 East College Avenue, Post Office Box 1838, Tallahassee, Florida 32302 on this 31st day of August, 1987.

Lee R. Rohe
LEE R. ROHE
Assistant Attorney General

ALL OF THOSE SUBMERGED LANDS IN GOVERNMENTAL LOTS 2 AND 3, SECTION 7, TOWNSHIP 1 SOUTH, RANGE 29 EAST, LYING WATERWARD OF THE MEAN HIGH WATER LINE.

TOGETHER WITH

ALL OF THOSE SUBMERGED LANDS IN GOVERNMENTAL LOTS 1, 2, A PART OF 3, AND 5, SECTION 18, TOWNSHIP 1 SOUTH, RANGE 29 EAST, LYING WATERWARD OF THE MEAN HIGH WATER LINE. A PART OF GOVERNMENT LOT 3 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWING:

> For a point of begining commence at the most northeast corner of said Government Lot 3; thence run north 63 degrees 03 minutes 30 seconds west, a distance of 257.40 feet to an angle point in the westerly meander line of said Government Lot 3; thence run along said westerly meander line south 52 degrees 43 minutes 30 seconds west, a distance of 1152.35 feet to an angle point in said meander line; thence continue along said meander line south 36 degrees 33 minutes 30 seconds west, a distance of 400 feet; thence run due east, a distance of 1401.23 feet to the easterly line of said Goverment Lot 3; said easterly line being the section line dividing Sections 17 and 18 of said Township and Range; thence run north 1 degree 03 minutes west along said easterly line, a distance of 902.74 feet to the point of beginning.

TOGETHER WITH

ALL OF THOSE SUBMERGED LANDS IN GOVERNMENTAL LOT 6, SECTION 19, TOWNSHIP 1 SOUTH, RANGE 29 EAST, LYING WATERWARD OF THE MEAN HIGH WATER LINE.

MEAN HIGH WATER LOCATION OF ABOVE-DESCRIBED LANDS

THE MEAN HIGH WATER LINE ON THE WEST SHORE OF FORT GEORGE ISLAND IS LOCATED 4.1 FEET VERTICALLY DOWN FROM THE TOP OF FLORIDA STATE'S DEPARTMENT OF NATURAL BENCH MARK "BSM 137" AND ON THE EAST SIDE IS LOCATED 3.0 FEET VERTICALLY DOWN FROM THE TOP OF FLORIDA STATE'S DEPARTMENT OF NATURAL RESOURCES BENCH MARK "BSM 118", AS PER BENCH MARK ELEVATION DATA OF FT. GEORGE ISLAND ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES, BUREAU OF SURVEY AND MAPPING.

TOGETHER WITH A FILLED PARCEL (SEE EXHIBIT I-A)

THOSE LANDS NOW FILLED, FORMERLY SUBMERGED, PARTLY WITHIN GOVERNMENTAL LOT 6, SECTION 19, TOWNSHIP 1 SOUTH, RANGE 29 EAST, MORE PARTICULARLY DESCRIBED AS LYING NORTH OF BATTON ISLAND, WEST OF HAULOVER CREEK, SOUTH OF FORT GEORGE ISLAND AND EAST OF EDGEWOOD DRIVE AND ALSO AS DESIGNATED BY THE CAPTION "SPOIL FILL", DEPICTED ON A 1967 LAND SURVEY DRAWING AS FILED WITHIN THE JACKSONVILLE PORT AUTHORITY RECORDS ENTITLED "SURVEY OF PORTIONS OF GOV'T LOTS 4, 5, 10 AND 11, SEC. 19, TWP. 1 SOUTH, RGE. 29 EAST, DUVAL COUNTY, FLORIDA", BY ROBERT M. ANGAS AND ASSOCIATES, JOB NO. B22594-662 FOR JACKSONVILLE PORT AUTHORITY, CONSISTING OF APROXIMATELY 46 ACRES, COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT I-A.

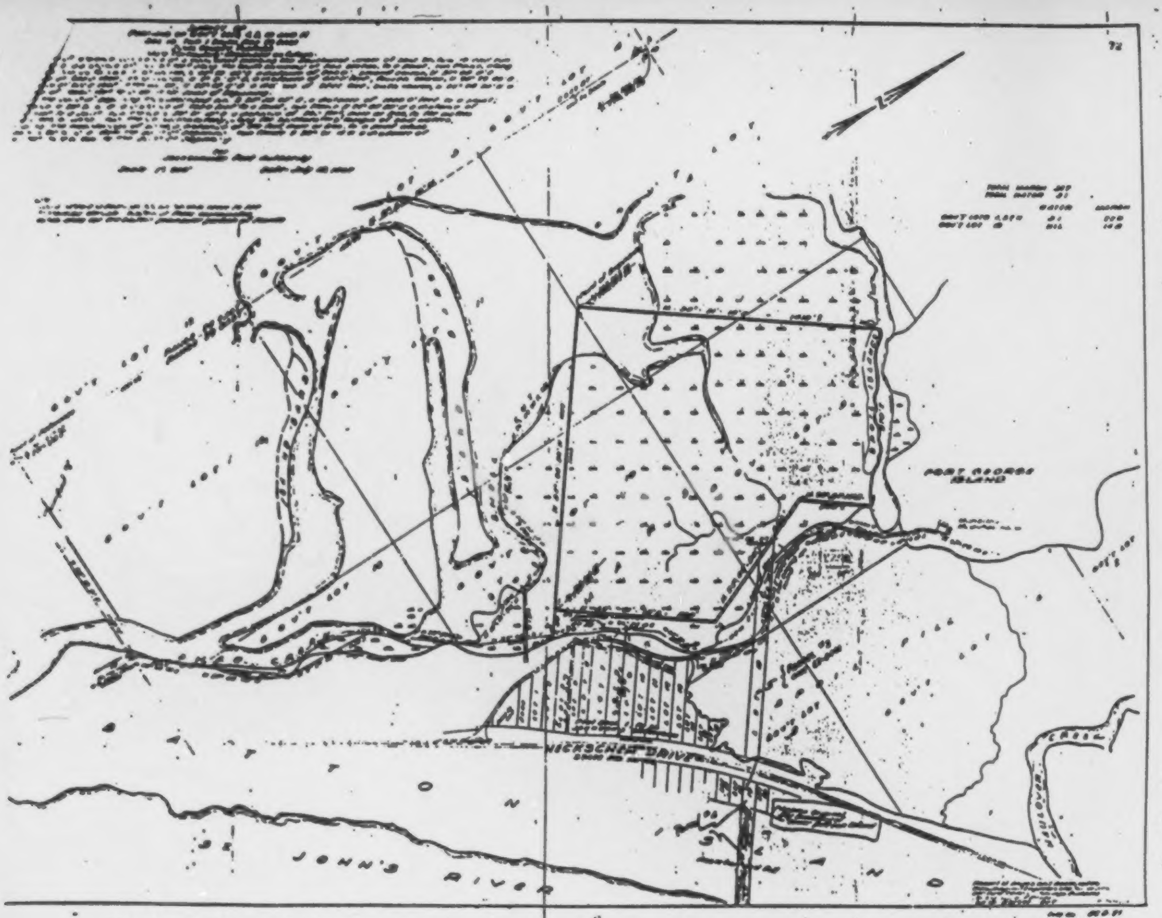
LESS AND EXCEPT

A TRACT OF LAND DESCRIBED AS FOLLOWS:

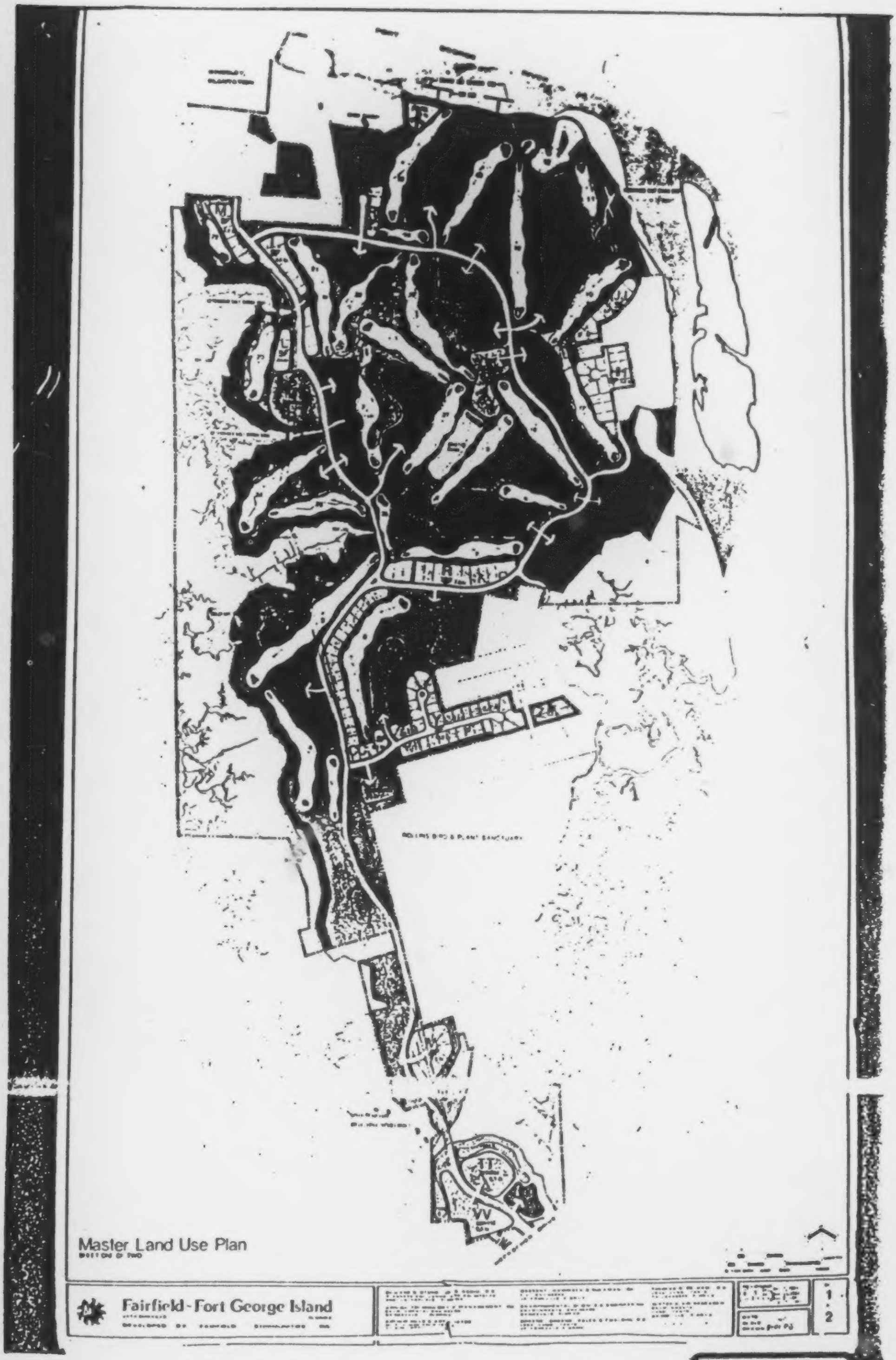
ALL OF THE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 5895, PAGES 1064-1066, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

ALL OF THE ABOVE-DESCRIBED LANDS LYING WITHIN DUVAL COUNTY, FLORIDA.

PLAINTIFF'S
EXHIBIT
I


GOV'T LOT
FORT GEORGE ISLAND
GOV'T LOT 2
HECKSCHER DRIVE
B A T T O N
I S L A N D
ST. JOHN'S RIVER
HAULOVER CREEK

PLAINTIFF'S
EXHIBIT
I-A


ROLLINS BIRD & PLANT SANCTUARY
TT
VV
Master Land Use Plan
Fairfield - Fort George Island
1
2

PLAINTIFF'S EXHIBIT
TT

Fairfield-Ft. George Island
11241 Ft. George Road East
Post Office Box 197
Jacksonville, Florida 32226

March 24, 1987

The Honorable Bob Butterworth
Attorney General
The Capitol
Tallahassee, Florida 32301

RE: Submerged Land Issues

Dear Attorney General Butterworth:

It has come to our attention that there is a concern in some quarters that Fairfield Communities, Inc. may be asserting an interest in certain marshlands adjoining Ft. George Island, Duval County, Florida, that may be inconsistent with the State's interests in Mobil Oil Corporation vs. the State of Florida and the Department of Natural Resources of the State of Florida and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, Case No GC-G-82-1089, which is presently pending before the Circuit Court in and for Polk County, Tenth Judicial Circuit, State of Florida. It is Fairfield's earnest intent and desire to avoid any such problems. Accordingly, Fairfield hereby covenants that for all marshlands it may own below the mean high water line of Ft. George Island it will not do any of the following:

(a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above those marshlands unless authorized by the appropriate regulatory agencies;

(b) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive material;

(c) Removal or destruction of any trees, shrubs, or other vegetation;

(d) Any excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance;

(e) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

(f) Acts or uses detrimental to such retention of land or water areas.

PLAINTIFF'S
EXHIBIT
III

Fairfield also covenants that these marshlands shall remain open to free and unimpaired uses of those lands by Fairfield and the public at large in the same manner and to the same extent as any sovereignty submerged lands of the State of Florida.

Fairfield further covenants that upon the receipt of all necessary development approvals for its Ft. George Island project, it will enter into good faith negotiations with the State of Florida and agencies thereof to negotiate a transfer of whatever property interests it may have in those lands lying below the mean high water line of Ft. George Island to the State of Florida and/or its designees.

We hope and trust that the representations contained in this letter will obviate any concern that Fairfield will assert any interest in the above-referenced marshlands other than for the limited purpose of calculating the allowable density for Fairfield's proposed development. Of course, if you have any questions or desire any further clarification, please do not hesitate to give me a call.

Sincerely,

William M. Peterson

WMP:cjm

RECEIVED

JUL 1 1987

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Regulatory Division
Permits Branch

PUBLIC NOTICE

Permit Application No. 87IPP-20359

TO WHOM IT MAY CONCERN: This District has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act, as described below:

APPLICANT: Fairfield Communities, Incorporated
11241 Fort George Road East
Jacksonville, Florida 32226-9999

WATERWAY & LOCATION: Adjacent wetlands of Sisters Creek and Fort George River, at Fort George Island, Section 37, Township 1 South, Range 29 East, Jacksonville, Duval County, Florida. The National Wetlands Inventory Classification is: Estuarine, forested, shrub-scrub, and emergent.

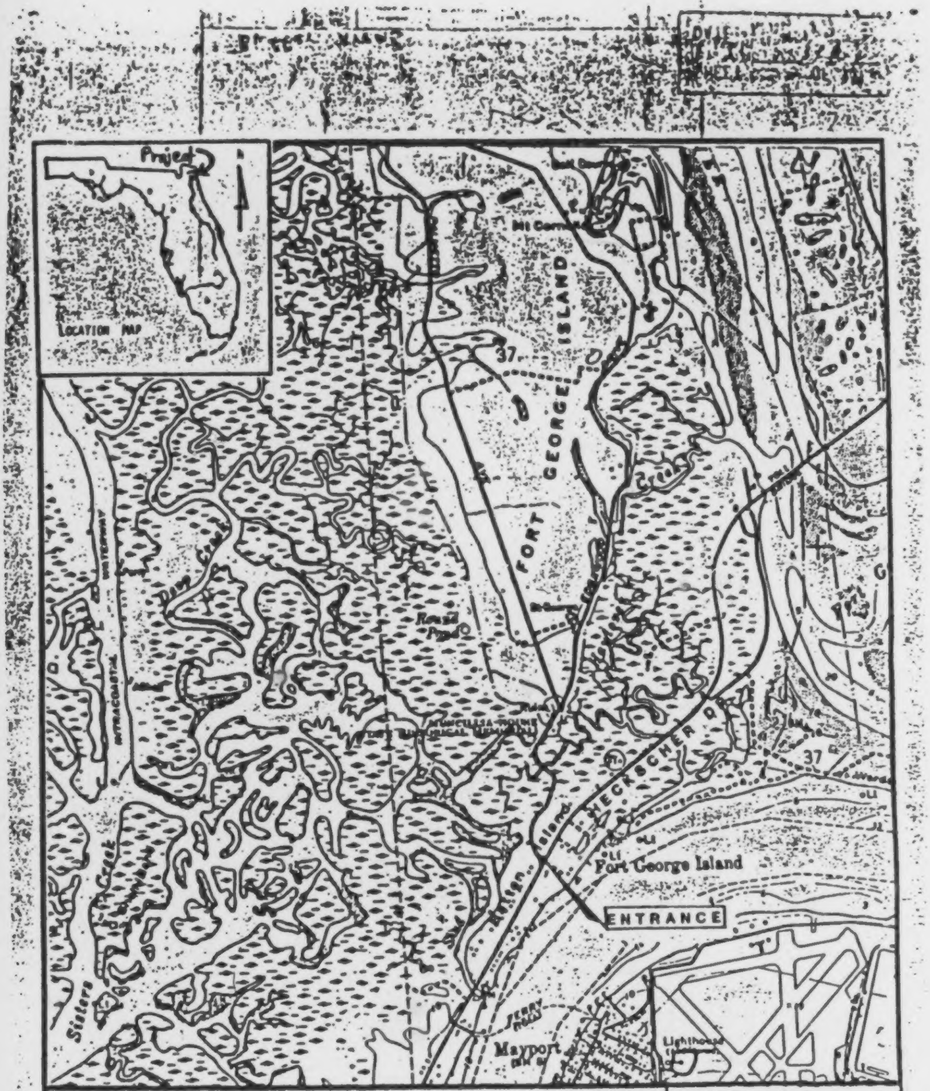
LATITUDE & LONGITUDE: Latitude 30°26'00", Longitude 81°26'00".

WORK & PURPOSE: The applicant proposes to construct a residential, recreational, and commercial development on Fort George Island. The proposed development would consist of 508 acres to include a 27-hole golf course, a maximum of 1,343 dwelling units, and 80,000 square feet of commercial space. Specifically, the applicant proposes to fill 10.13 acres, excavate 4.47 acres, and preserve 184.97 acres of the existing 199.57 acres of jurisdictional wetlands. A bridge crossing into the project would require 0.27 acres of fill and 60 cubic yards of riprap. In addition, the applicant would create 25.37 acres of ponds and restore 0.81 acre of salt marsh by removing existing causeways. Bulkheads would be constructed at pond "D" (740 linear feet) and pond "B" (400 linear feet).

Impacts from the work would be mitigated by several design features. An upland buffer zone at least 50 feet wide would be preserved adjacent to all the perimeter salt marsh. The existing causeways through 2 sloughs would be removed; also, Spartina alterniflora would be planted at the present causeway locations. Approximately 3.1 acres of littoral zones would be created in the 5 new lake systems. An additional 0.44 acre of fresh water herbaceous wetland would be created adjacent to an existing wetland at hole number 24. The proposed stormwater treatment system would consist of wet detention ponds with littoral zones, dry retention (fairways), vegetated swales, and oil and grease skimmers.

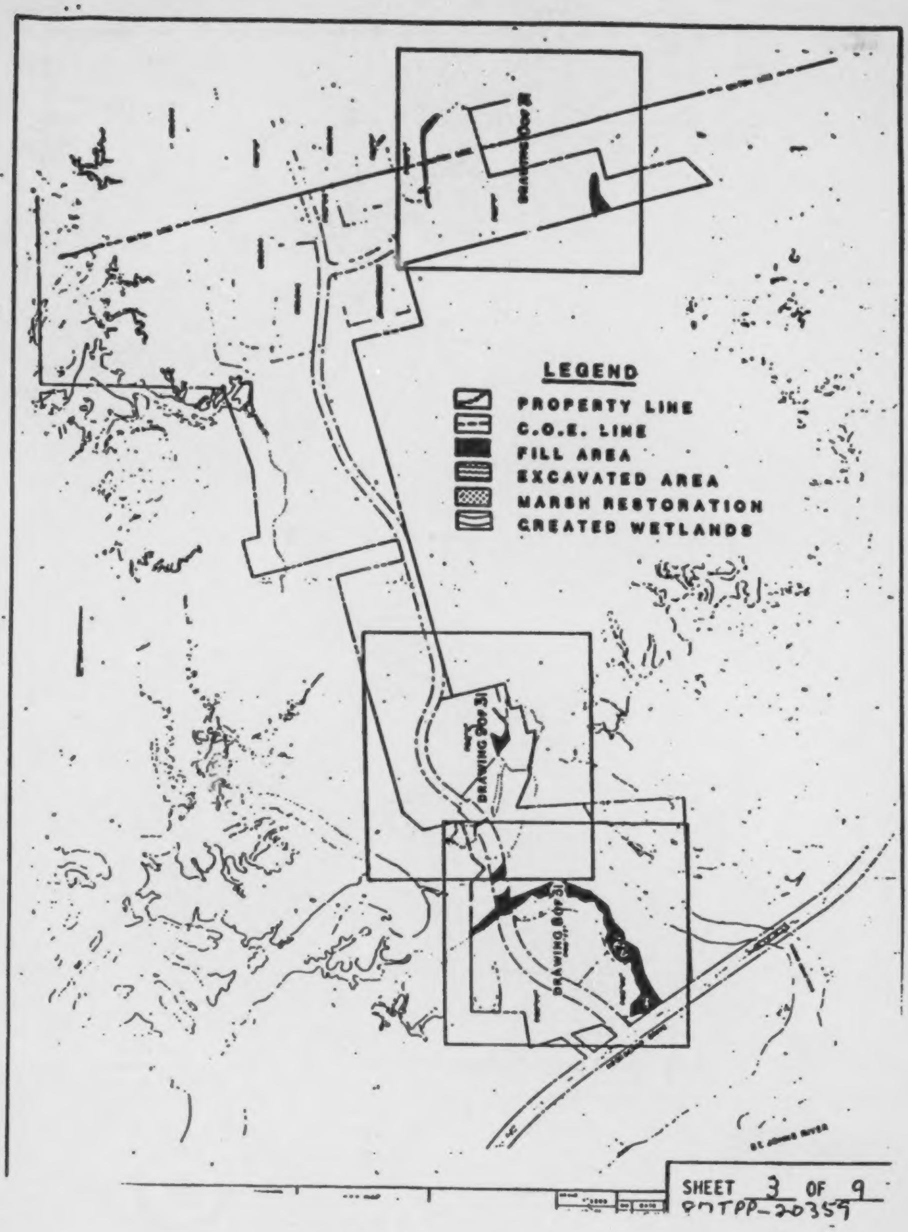
PLAINTIFF'S
EXHIBIT

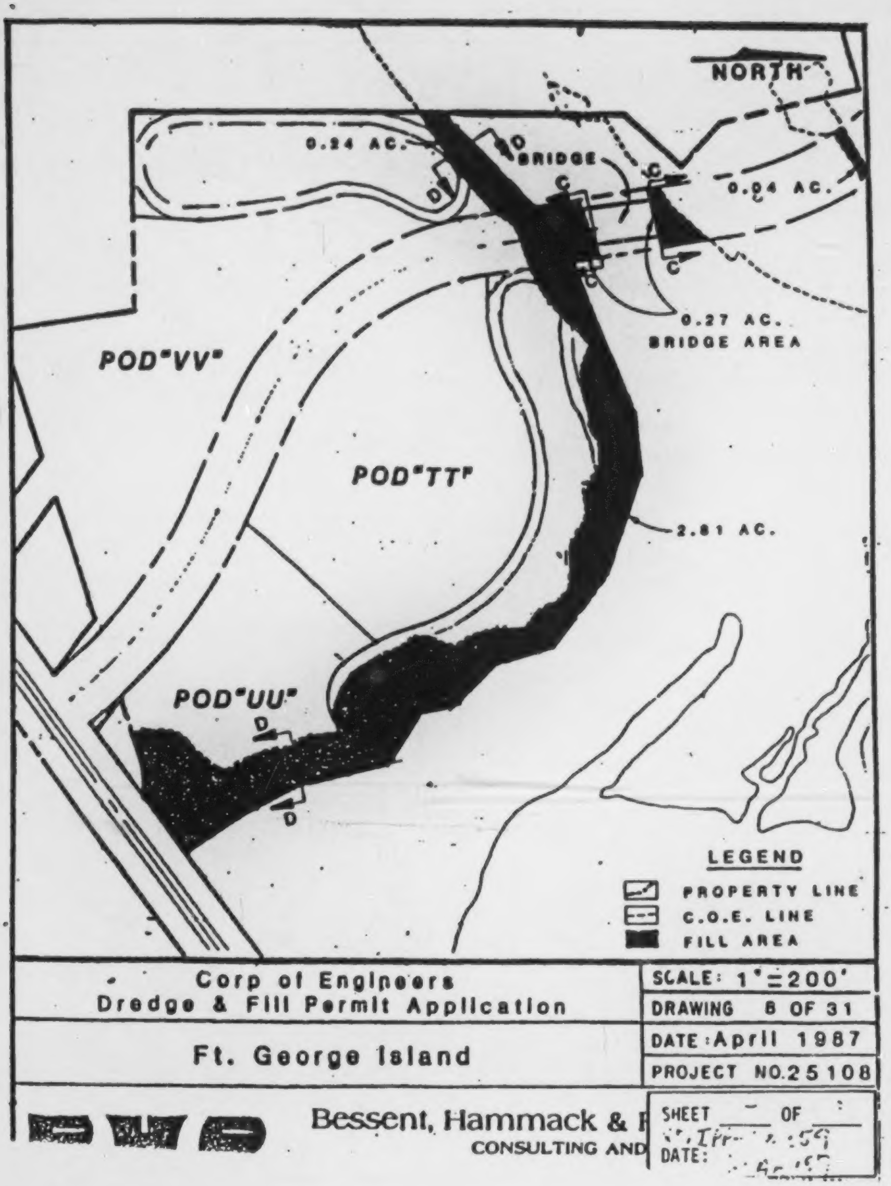
BEST AVAILABLE COPY

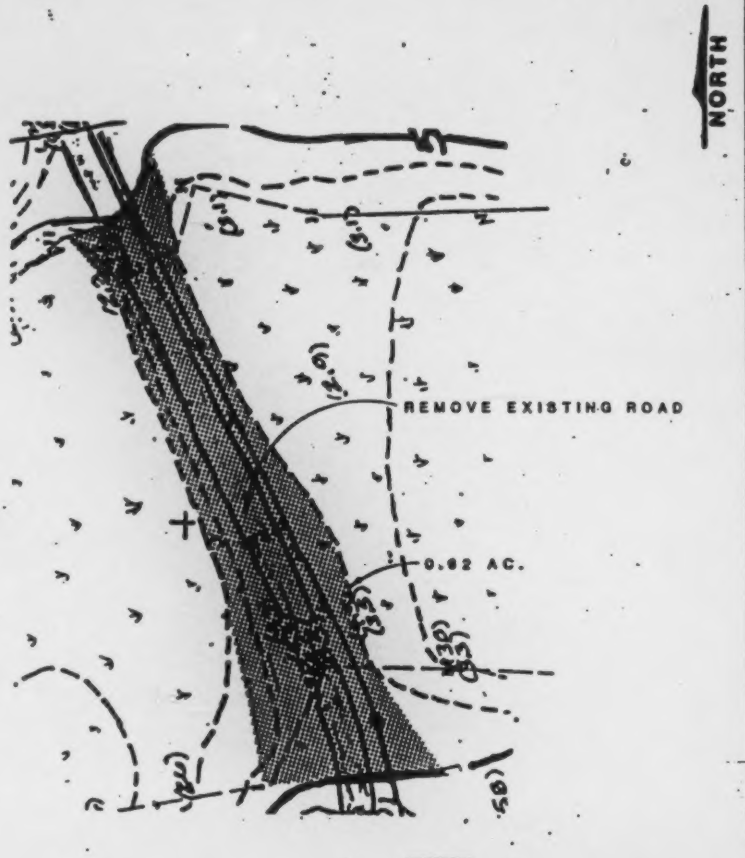

Project
LOCATION MAP
FORT GEORGE ISLAND
37
INTRACOASTAL WATERWAY
Sisters Creek
HECKSCHER DR
Fort George Island
ENTRANCE
Mayport
Lighthouse

Fairfield Ft. George Island	SCALE: N.T.S. DRAWING 3 OF 31
Entrance Vicinity Map	DATE: MAY 1987 PROJECT NO. 25108

Bessent, Hammack &


LEGEND
PROPERTY LINE
C.O.E. LINE
FILL AREA
EXCAVATED AREA
MARSH RESTORATION
CREATED WETLANDS
ST. JOHNS RIVER
SHEET 3 OF 9
87TPP-20359


NORTH
0.24 AC.
D
BRIDGE
C
C
0.04 AC.
D
C
C
C
0.27 AC.
BRIDGE AREA
POD "VV"
POD "TT"
2.81 AC.
POD "UU"
D
D
LEGEND
PROPERTY LINE
C.O.E. LINE
FILL AREA
Corp of Engineers
Dredge & Fill Permit Application
Ft. George Island
SCALE: 1" = 200'
DRAWING 8 OF 31
DATE: April 1987
PROJECT NO. 25108
Bessent, Hammack &
CONSULTING AND
SHEET OF
DATE:


NORTH
REMOVE EXISTING ROAD
0.62 AC.

▨ Marsh Restoration

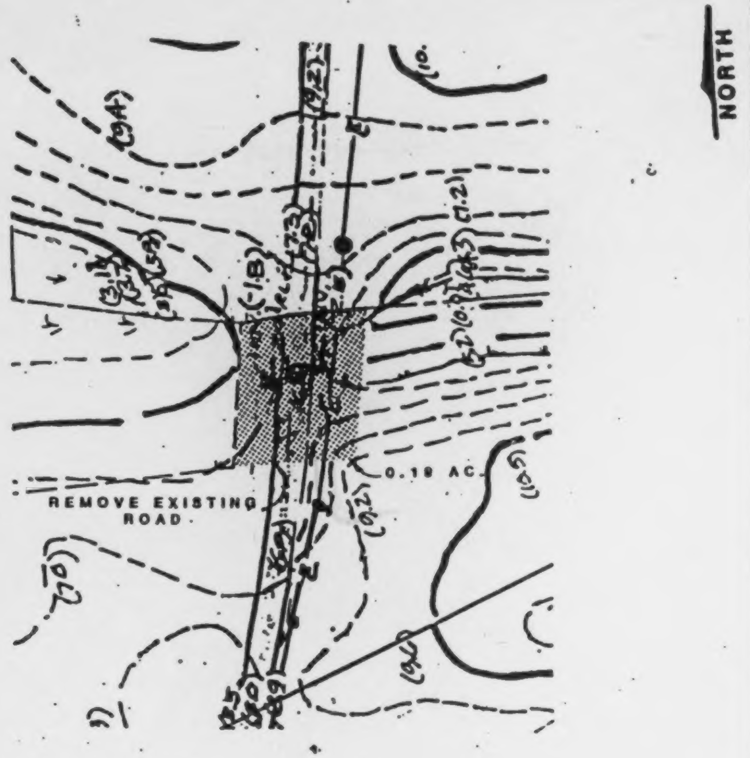
Big Slough – Marsh Restoration	SCALE: N.T.S. DRAWING 12 OF 31
Fairfield Ft. George Island	DATE: April 1987 PROJECT NO. 25108

Bessent, Hammack &

CONSULTING AND

SHEET 8 OF 9

87IPP-20359

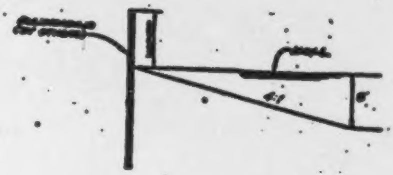

NORTH
(9.4)
(9.2)
(10.
(7.2)
(-1.8)
0.19 AC.
REMOVE EXISTING
ROAD
(10.5)
(9.2)
(9.0)

▨ Marsh Restoration

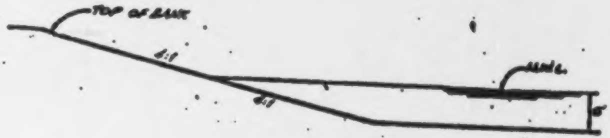
Middle Slough - Marsh Restoration	SCALE: N.T.S.
	DRAWING 15 OF 31
Fairfield Ft. George Island	DATE: April 1987
	PROJECT NO.25108

Bessent, Hammack &
CONSULTING AND

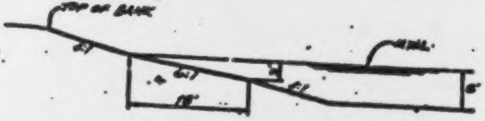
SHEET 9 OF 9
87IPP-20359
DATE: May '87



Typical Pond Section At Bulkheading


TOP OF BANK
4:1
4:1
6'

Typical Pond Section

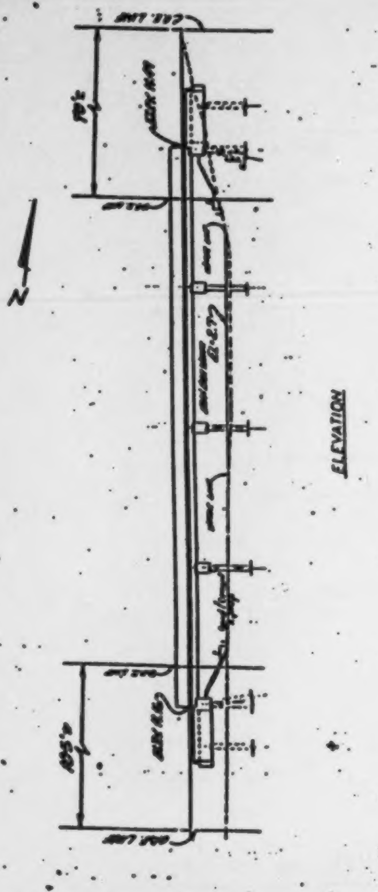

TOP OF BANK
4:1
4:1
18'
4:1
6'

Typical Pond Section With Littoral Zone

Typical Pond Sections C.O.E. Dredge & Fill Permit Application	SCALE: N.T.S.
	DRAWING 27 OF 31
Fairfield Ft. George Island	DATE: April 1987
	PROJECT NO. 25108

Bessent, Hammack &
CONSULTING AN

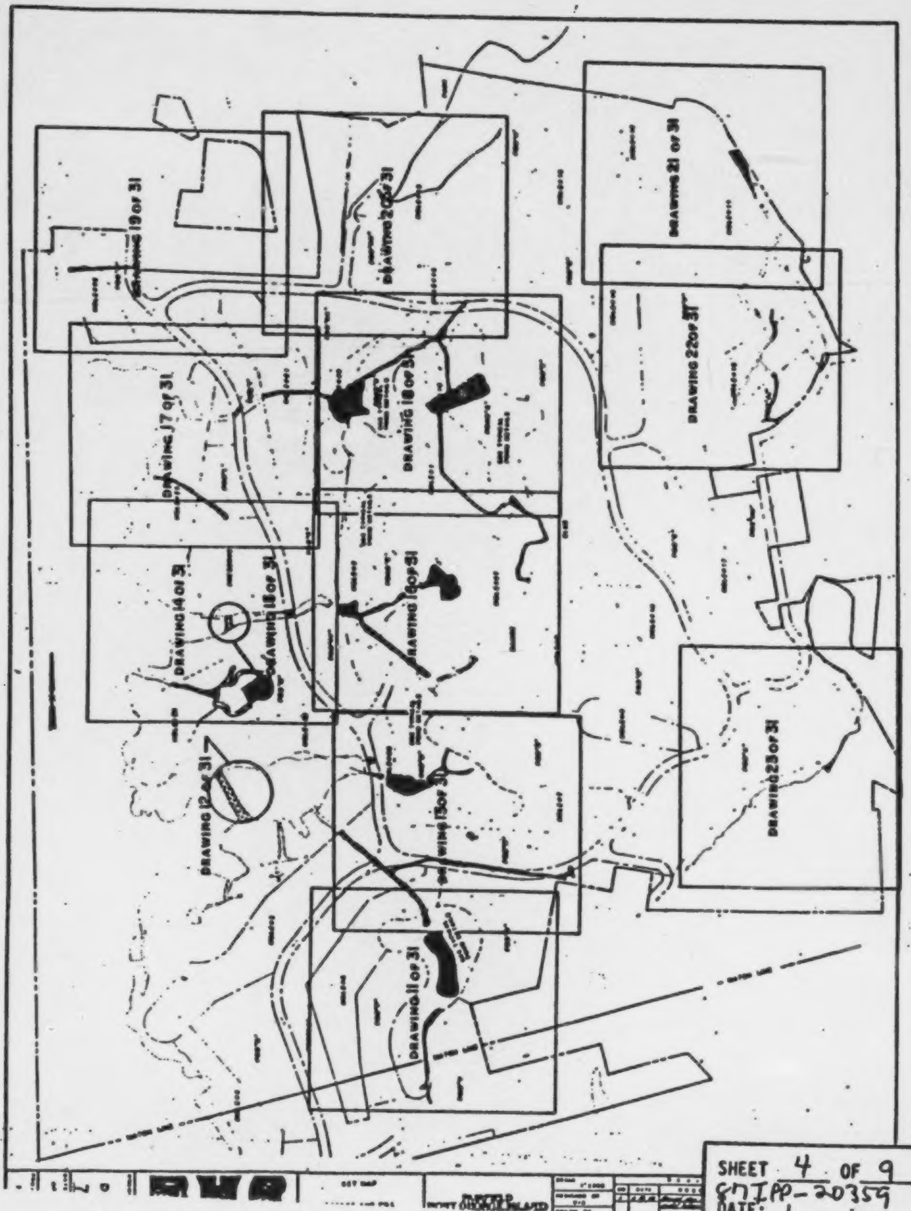
SHEET 7 OF 9
87IPP-2D359
DATE:



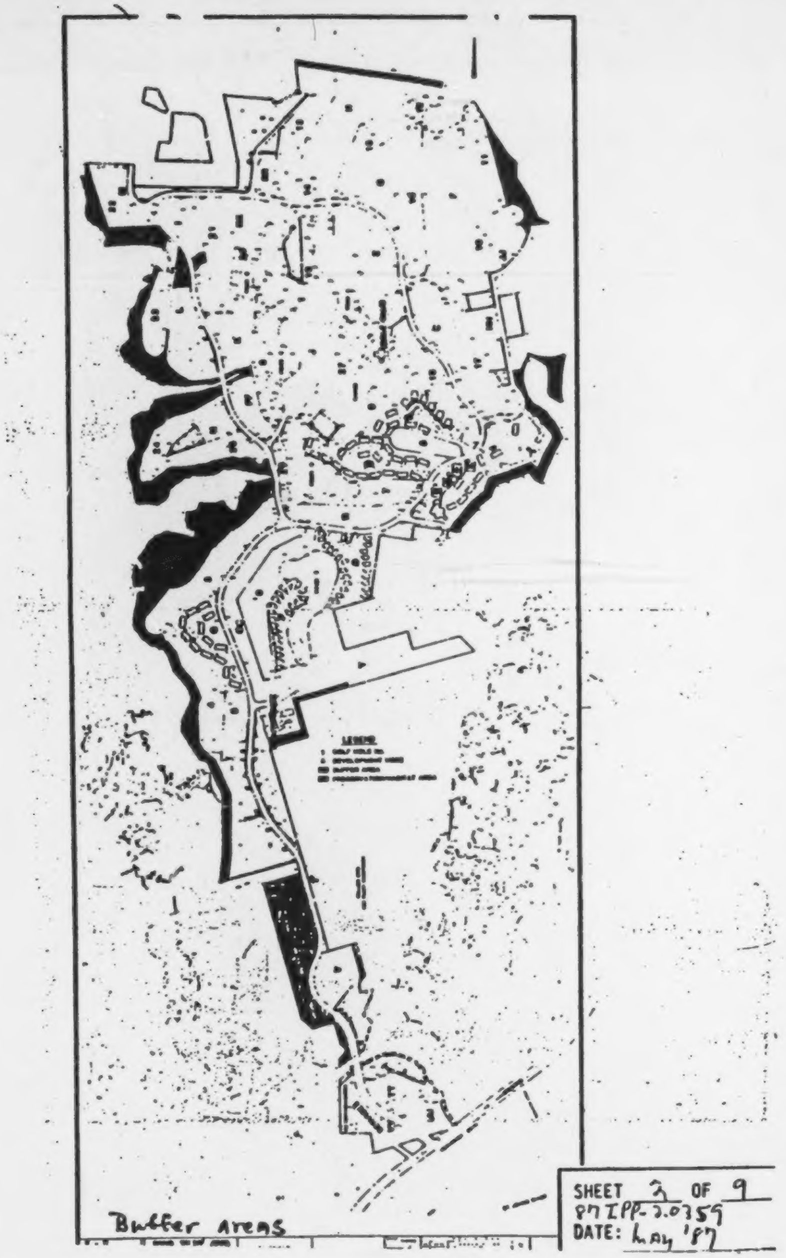
D.E.R. LINE:
No Fill Area Proposed Landward Of The Mean High Water Line

Approx. (0.002) Acres Of Fill Waterward Of The Mean High Water Line

Bridge Crossing-Profile View	SCALE: N.T.S. DRAWING 30 OF 3
Fairfield Ft. George Island	DATE: May 198 PROJECT NO. 251
Bessent, Hammack & CONSULTING AN	SHEET 6 OF 9 87IPP-20359 DATE: MAR '87


DRAWING 19 of 31
DRAWING 20 of 31
DRAWING 21 of 31
DRAWING 22 of 31
DRAWING 17 of 31
DRAWING 18 of 31
DRAWING 14 of 31
DRAWING 16 of 31
DRAWING 15 of 31
DRAWING 12 of 31
DRAWING 13 of 31
DRAWING 11 of 31
DRAWING 23 of 31

SHEET 4 OF 9
87IPP-20359
DATE: Mar '87



Buffer areas

SHEET 3 OF 9
87IPP-2.0359
DATE: May '87

-2-

NOTE: This public notice is being issued based on information furnished by the applicant. This information has not been verified.

AUTHORIZATION FROM OTHER AGENCIES: State Department of Environmental Regulation: State permit/certification may be required.

Comments regarding the application should be submitted in writing to the District Engineer at the above address within 30 days from the date of this notice.

If you have any questions concerning this application, you may contact Liz Rhodes of this office, telephone (904) 791-1669.

BEST AVAILABLE COPY

AUG 10 1987

BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL REGULATION

In the Matter of:)
)
Application for Permit by:) Application No.: 161329592
) Duval County-D/F
Fairfield Communities, Inc.)
c/o Jerry Eckert, P.E.)
Bessent, Hammack & Ruckman, Inc.)
1900 Corporate Square Blvd.)
Jacksonville, FL 32216)

INTENT TO ISSUE

The Division of Environmental Permitting hereby gives notice of its Intent to Issue, and proposed order of issuance for, a permit pursuant to Chapter 403, Florida Statutes and Florida Administrative Code Rules 17-4 and 17-12, and Water Quality Certification pursuant to Section 401 of Public Law 92-500, for the proposed project as detailed in the application specified above.

The applicant, Fairfield Communities, Inc., applied through an agent, Bessent, Hammack & Ruckman, Inc., on April 10, 1987, for a dredge an fill permit and water quality certification to construct a pile-supported bridge across Haulover Creek and in the process of relocating a road, remove two existing fill road crossings of tidal sloughs flowing into Garden Creek, construct two new fill road crossings of the same sloughs and upgrade an existing road crossing of a tidal ditch which flows into Garden Creek. The pile-supported bridge is to be 107 feet in length and 47 feet in width, and involves the placement of 6 cubic yards of fill within Department of Environmental Regulation (DER) dredge/fill (D/F) jurisdiction. The two existing fill road crossings of tidal sloughs are 400 feet and 170 feet in length and will require the excavation of 5,980 cubic yards in their removal. The new fill road crossings of the sloughs, which are located further upstream than the existing crossings, will involve the placement of 1,562 cubic yards of fill within DER D/F jurisdiction. The existing road crossing of a tidal ditch is to be upgraded by being widened and replacing the existing culvert.

The Department has permitting jurisdiction under Chapter 403, Florida Statutes, Florida Administrative Code Rules 17-4 and 17-12 and Public Law 92-500 for the construction of pollution sources within waters of the State. Haulover Creek and Garden Creek constitute waters of the State in which the Department has dredge and fill permitting jurisdiction pursuant to Florida Administrative Code Rule 17-12.030(2)(a). This project proposal is not exempt from permitting procedures. The applicant was officially notified by the Department that a dredge/fill permit was required for the proposed work. The field appraisal was conducted by an Environmental Specialist from the Department of Environmental Regulation on July 8, 1986.

The Department intends to issue this permit for the following reason(s):

The applicant has provided the Department with affirmative reasonable assurance, pursuant to Florida Administrative Code Rule 17-12.070(1) that the immediate and long-term impact of the project will not result in violation of State Water Quality Standards.

In addition, the applicant has provided the Department with reasonable assurance pursuant to Florida Administrative Code Rule 17-12.070(2) that based on plans, test results or other information that the project is not contrary to the public interest in accordance with Section 403.918(2), Florida Statutes.

Section 403.918(2), Florida Statutes, states that,

> "No permit shall be issued under this part unless the applicant provides the department with reasonable assurance that the project is not contrary to the public interest..... (a) In determining whether a project is not contrary to the public interest the department shall consider and balance the following criteria:
>
> (1) Whether the project will adversely affect the public health, safety, or welfare or property of others;
> (2) Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
> (3) Whether the project will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

(4) Whether the project will adversely affect the fishing or recreation values or marine productivity in the vicinity of the project;
(5) Whether the project will be of a temporary or permanent nature;
(6) Whether the project will adversely affect or enhance significant historical and archeological resources under the provision of s. 267.061; and
(7) The current condition and relative value of functions being performed by areas affected by the proposed activity.

The permit shall be issued with the following condition(s):

(1) The permittee is hereby advised that Florida law states: "No person shall commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund of the Department of Natural Resources under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use." Pursuant to Florida Administrative Code Rule 16Q-14, if such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to $10,000 per offense.

(2) If historical or archeological artifacts, such as Indian canoes, are discovered at any time within the project site the permittee shall immediately notify the district office and the Bureau of Historic Preservation, Division of Archives, History and Records Management, R.A. Gray Building, Tallahassee, Florida 32301.

(3) Turbidity controls shall be utilized throughout the project to contain any turbidity generated that exceeds State water quality standards.

(4) The work shall be done during periods of average or low water.

(5) All fill slopes shall be stabilized as soon as possible after placement to prevent erosion of material into waters of the State.

(6) This permit authorizes only the activity described in the written text of this permit. Other fill placed in ditches does not require a DER D/F permit only if it can be substantiated by the landowner that either the ditch complies with the requirements of Chapter 403.817(2), Florida Statutes, or the flow in the ditches is in response to rainfall and not normal levels of groundwater.

This Intent to issue shall be placed before the District Manager for final action unless an appropriate petition for a hearing pursuant to the provisions of Section 120.57, Florida Statutes, is filed within fourteen (14) days from receipt of this letter. The petition must comply with the requirements of Section 17-103.155 and Rule 28-5.201, Florida Administrative Code, (copies attached) and be filed pursuant to Rule 17-103.155(1) in the Office of General Counsel of the Department of Environmental Regulation at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Petitions which are not filed in accordance with the above provisions are subject to dismissal by the Department. In the event a formal hearing is conducted pursuant to Section 120.57(1), all parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination of witnesses and submit rebuttal evidence, to submit proposed findings of facts and order, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. If an informal hearing is requested, the agency, in accordance with its rules of procedure, will provide affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer, written or oral evidence in opposition to the agency's action or refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction, pursuant to Section 120.57(2), Florida Statutes.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the proposed agency action. Therefore, persons who may not wish to file a petition, may wish to intervene in the proceeding. A petition for intervention must be filed pursuant to Model Rule 28-5.207 at least five (5) days before the final hearing and be filed with the hearing officer if one has been assigned at the Division of Administrative Hearings, 2009 Apalachee Parkway, Tallahassee, Florida 32301. If no hearing officer has been assigned, the petition is to be filed with the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such person has to request a hearing under section 120.57, Florida Statutes.

EXECUTED the 6th day of August, 1987, in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

for Gary Shaffer
Ernest E. Frey
District Manager

3426 Bills Road
Jacksonville, FL 32207

EEF:jto

Copy to: William H. Congdon, Permit Attorney, DER, Tallahassee
John Adams, ACOE, Jacksonville
Jeremy Tyler, DER, Jacksonville
Michael Eaton, DER, Jacksonville
Terry Cole, (Certified #P 278 295 039)
Janie G. Thomas, Pres., OFF (Certified #P 278 295 040)

CERTIFICATE OF SERVICE

This is to certify that this NOTICE OF INTENT TO ISSUE and all copies were mailed before the close of business on 8-6-87 to the listed persons.

FILING AND ACKNOWLEDGEMENT
FILED, on this date pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.
Clerk 8-6-87 Date

CHARLES E. BENNETT
MEMBER
3RD DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE

MERCHANT MARINE AND FISHERIES
COMMITTEE

CHAIRMAN OF FLORIDA CONGRESSIONAL
DELEGATION

Congress of the United States
House of Representatives
Washington, DC 20515

RAMON L. DAY
ADMINISTRATIVE ASSISTANT

JODY H. MOONEY
LEGISLATIVE ASSISTANT

SHARON H. SIEGEL
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WASHINGTON OFFICE:
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TELEPHONE 202-225-2501

JOHN W. POLLARD, JR.
BRENDA C. DONALDSON
DONNA M. WELDON

JACKSONVILLE OFFICE:
314 PALMETTO STREET
JACKSONVILLE, FL 32202
TELEPHONE 904-791-2587

OCT - 8 PM 1:

October 6, 1987

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands, National
  Parks and Forests
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

There is no need to put the enclosed letter in the file of the hearing on the Timucuan Preserve Bill unless you want to, but you might want to consider it. The reason for this is that it shows that, as it pertains to Fort George Island, now that it is coming up for consideration for protection by the state in a way which would synchronize with the legislation before you and allow the federal government to acquire this property at little or no cost; property worth many millions of dollars if this state procedure is successful. This, of course, has a bearing upon the Timucuan Preserve because this is property allowed to be placed in the Timucuan Preserve by the national government if it is given by the state.

With kindest regards, I am

Sincerely,

Charlie
Charles E. Bennett

CEB:des
Enclosure

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MATTOX HAIR
9th District

COMMITTEES:
Personnel, Retirement and Collective Bargaining,
Chairman
Appropriations, Sub. B
Commerce
Rules and Calendar

September 25, 1987

Honorable Charles E. Bennett
2107 Rayburn House Office Building
Washington, D.C. 20515

Dear Charlie:

Thank you for your recent letter concerning placing Ft. George Island on the CARL list for possible purchase by the state.

In checking the status of Ft. George Island, I learned that it will have the first evaluation by the CARL committee at their meeting on October 13, 1987. I have therefore contacted each of the members of the committee and urged that it receive favorable consideration by them. I will, of course, also follow up with the governor and cabinet to urge their approval.

I hope that your proposed federal legislation will be of assistance to the state in preserving Ft. George. I look forward to working with you any way I can to assist in the preservation of this very important and environmentally sensitive area.

Sincerely,

Mattox Hair

MH:ks

REPLY TO:
☐ 1200 Gulf Life Drive, Suite 900, Jacksonville, Florida 32207 (904) 359-6406
☐ 322 Senate Office Building, Tallahassee, Florida 32399-1100 (904) 487-5030

JOHN W. VOGT, President
JOHN A. HILL, President Pro Tempore
JOE BROWN, Secretary
WAYNE W. TODD, JR., Sergeant at Arms

CHARLES E. BENNETT
MEMBER
3RD DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE
AND DEFENSE POLICY PANEL

MERCHANT MARINE AND FISHERIES
COMMITTEE

CHAIRMAN OF FLORIDA CONGRESSIONAL
DELEGATION AND OF
MILITARY REFORM CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

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DONNA M. WELDON

JACKSONVILLE OFFICE:
314 PALMETTO STREET
JACKSONVILLE, FL 32202
TELEPHONE 904-791-2587

September 30, 1987

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks and Forests
Room 229 Dirksen Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find a copy of an article that appeared in the Orlando Sentinel concerning the Timucuan Bill and Fort George Island. As you can see, the article comes out in support of both the bill and the island. I thought that you would be interested in this.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB:ems
Enclosure

for couch potatoes. High 92, low 74. Details, page A-2.

Sunday, September 13, 1987

he Orlando Sentinel

The best newspaper in Florida

Florida Edition

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The Orlando Sentinel

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Deputy Managing Editors
GEORGE C. BIGGERS III
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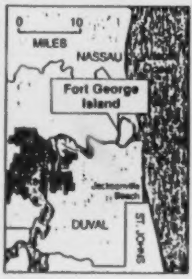
Bitter salt for paradise . . .

Salt is seeping into the drinking water wells on tiny Fort George Island near the mouth of the St. Johns River in Jacksonville. Indeed, officials have recommended that water be rationed on the island, which Indians centuries ago called the "sweet land by the sea."

Today it is still the sweet land, an extraordinary setting more typical of islands far to the south. It is known for its canopy of trees, a tropical hardwood forest, lush plant life, huge sand dunes and a host of birds and animals amid dozens of prehistoric and historic sites.



But what would Fairfield Communities Inc. like to do with this curious treasure that has a threatened water supply? Make it a platform for 1,343 time-share units, condominiums and homes in a $200 million resort community.

No one can say how long the deeper water sources that Fairfield wants to tap will last under the pressure of use by thousands of residents. But what happens if the good water gives out? Would taxpayers have to provide a source to protect the health and welfare of the residents? This is a crazy place to put a development.

This development is typical of the Florida coastal developments that never should have been proposed — much less been the focus of a bitter battle that already has lasted longer than World War II.

Oh, this isn't the first time someone has tried to develop Fort George Island. In 1975 the area planning board scotched a plan to build a mere 864 homes on the island. The board was rightly worried about the adequacy of the water supply and the effect of pollution from stormwater runoff on surrounding shellfish waters. That should have discouraged other developers and saved everyone a lot of grief.

But no, for the past six years the Arkansas-based company has been wrestling doggedly with environmental and citizen groups to win the right to shoehorn its huge resort into the 900-acre island.

Fairfield already has sunk about $13 million into the development and fought for it from Jacksonville to Tallahassee to Washington in myriad proceedings. Yet many issues, such as whether the development is subject to state review, still have to be hashed out.

It's easy to get distracted by the sheer complexity of what has happened over the past half-dozen years, including conflicts of interest and Fairfield's influence on compliant Jacksonville politicians. But the basic question hasn't changed: Should a major development be built on an environmentally vulnerable island whose water supply is so undependable? The answer still is no.

The company, which has a lot of financial problems, should cut its losses and pull out — particularly if the land can be bought for a park. The company, in fact, has not closed the door on the possibility of a private conservation group buying the land for eventual inclusion in a federal or state island preserve.

That possibility is improved by a bill now in Congress that could include Fort George Island in a proposed 35,800-acre preserve in the St. Johns River's salt marshes. And the state could add Fort George Island to its priority list for purchase under the Conservation and Recreational Lands Program.

Whatever route is taken, the destination should be to preserve Fort George Island intact before it turns into just one more place, like so many other places in Florida, that used to be nice.

Weather: Another hot potat

T

$1.00

. . . don't sweeten the deal

The least that government can do to prevent Fort George Island from being overrun by the huge new Fairfield Communities development is to refuse to subsidize it.

But unless Fort George is included on a list of protected barrier islands, as recommended by the U.S. Interior Department, it still would be eligible for federal money for roads, bridges, flood insurance and homeowner loans.

In effect, taxpayers could be asked to help foot the bill for developing the fragile island in the first place, and then for fixing it up if it got smashed by a colossal hurricane sometime down the line.

That's just the kind of insanity that the federal law on barrier islands — a critical line of defense against the sea — was designed to prevent. Congress should include Fort George on the list of islands that get no federal help.

Listing the island also would drive up costs for the Fairfield development, perhaps enough to dampen the urge to build. Who would want to sink a lot of money into a house on a vulnerable coastal island if they couldn't get insurance? No one. And the taxpayers shouldn't be asked to take the risk for them.

Meanwhile, Gov. Bob Martinez and the Cabinet could keep the pressure on Fairfield by insisting that the state retain control over the development.

The company is pushing to have its fate decided by local officials more receptive to Fairfield's point of view rather than state environmental regulators.

It took heart with an opinion last month by John Radey, an independent attorney representing the state Department of Community Affairs in place of Secretary Thomas Pelham, formerly a lawyer for Fairfield. Mr. Radey said the company no longer has to abide by tough state requirements because the project has been scaled down. But his non-binding opinion has been challenged by Attorney General Bob Butterworth, who says the project does have to abide.

Unless the courts say otherwise, the state should refuse to give away the store by handing over its jurisdiction to local boosters.

CHARLES E. BENNETT
MEMBER
3RD DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER SUBCOMMITTEE
MEMBER OF PROCUREMENT SUBCOMMITTEE
AND DEFENSE POLICY PANEL

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October 1, 1987

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks, and Forests
Room 229 Dirksen Office Building
Washington, D.C. 20510

Attention: Beth Norcross

Dear Dale:

Enclosed is information refuting some of the claims made by the Fairfield Development Company in regard to Fort George Island, which is within the boundaries of the Timucuan Preserve. It is quite interesting and is important for inclusion in the hearing record for H.R. 1983. I, therefore, submit it for the record.

Mr. Arnold had wanted to testify, but was unable to because of other responsibilities. I would appreciate your including this for the record.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB:ems
Enclosure

cc: Honorable Lawton Chiles
Honorable Bob Graham

FRIENDS OF FORT GEORGE ISLAND
ESTABLISHED 1982

SEPTEMBER 30, 1987

RE: FORT GEORGE
ISLAND
FLORIDA

SENATOR CHILES, GRAHAM AND
CONGRESSMAN BENNETT:

IT IS MY UNDERSTANDING THAT AT THE SENATE SUBCOMMITTEE ON PUBLIC LANDS HEARING WHICH WAS HELD ON SEPTEMBER 29, 1987 IN WASHINGTON, D.C., THAT FAIRFIELD COMMUNITIES INC.' REPRESENTATIVE, MR. PETERSON, STATED THAT PERMITS HAD BEEN GRANTED, AND THAT THEIR PROPOSED DEVELOPEMENT OF FORT GEORGE ISLAND, FLORIDA, WAS READY TO START.

THIS STATEMENT IS NOT CORRECT. THERE FOLLOWS INFORMATION WHICH SHOWS THAT FAIRFIELD'S PROPOSED DEVELOPEMENT IS NOT READY TO START, THIS IS SUPPORTED BY THE ENCLOSED LETTERS.

THE LETTER DATED SEPTEMBER 8, 1987 (COPY ENCLOSED) FROM THE CITY OF JACKSONVILLE PLANNING DEPARTMENT TO FAIRFIELD CONFIRMS THAT: "FAIRFIELD COMMUNITIES INC. HAS ABANDONED THE AMENDED DEVELOPEMENT ORDER (A.D.O.) AND THAT ALL DEVELOPEMENT APPROVAL GRANTED BY THIS A.D.O

FRIENDS OF FT. GEORGE, INC. — A FLORIDA CORPORATION, NOT FOR PROFIT — P.O. BOX 371, JACKSONVILLE, FLORIDA, 32201

PAGE TWO

WAS TERMINATED."

THIS MEANS THAT FAIRFIELD CANNOT DEVELOPE FORT GEORGE ISLAND BECAUSE DEVELOPEMENT IS NOT ALLOWED BY THE D.R.I PROCESS, AND BY STATE STATUTE 380 AFTER DEVELOPEMENT APPROVAL IN THE AMENDED DEVELOPEMENT ORDER (A.D.O) HAS BEEN TERMINATED. BOTH THE D.R.I AND STATUTE 380 APPLY TO THIS PROPOSED PROJECT.

IN ADDITION TO THIS, PERMITS HAVE NOT BEEN GRANTED FOR THE FOLLOWING:

— DREDGE AND FILL BY THE ARMY CORPS OF ENGINEERS AND D.E.R.

— SPECIFIC RESOURCE MANAGEMENT PLANS WILL NOT BE REVIEWED BECAUSE OF ABANDONMENT OF THE A.D.O. - THESE WERE TO BE BY D.N.R., D.E.R., S.J.R.W.M.D, F.G.F.W.F.C., BIOENVIRONMENTAL SERVICES, ARCHIVES P.C.A AND R.P.C., PUBLIC WORKS,

— NO PERMITS FOR:
  - ROADS AND STREETS
  - STORMWATER CONVEYANCES
  - SEWAGE TREATMENT FACILITIES
  - WASTE LOAD ALLOCATION.
  - POTABLE WATER DISTRIBUTION
  - ENTRANCE BRIDGE.

PAGE THREE

OTHER OBSTACLES TO DEVELOPEMENT OF FORT GEORGE ISLAND BY FAIRFIELD ARE:

— LEGAL ACTION BY THE STATE OF FLORIDA TO RECOVER 190 ACRES OF PROPERTY CLAIMED BY FAIRFIELD.

— STATUTE 120 ADMINISTRATIVE HEARING CHALLENGING THE MASTER LAND USE PLAN (MLUP) THIS IS THE GOVERNOR AND THE CABINET OF FLORIDA, THE FRIENDS OF FORT GEORGE ISLAND INC AUDUBON SOCIETY AND OTHERS AGAINST FAIRFIELD

— THE F.B.I. AND THE FEDERAL GRAND JURY ARE INVESTIGATING FAIRFIELD AND CITY GOVERNMENT CONCERNING REZONING OF FORT GEORGE ISLAND AND PURSUING OTHER CHARGES WHICH INCLUDE FAIRFIELD AND FORT GEORGE ISLAND.

— ACCELERATION OF SALT WATER INTRUSION IN THE DRINKING WATER ON FT. GEO. ISLAND. WHICH WAS DISCOVERED LAST JULY. (1987)

PAGE FOUR

— APPLICATION TO THE STATE FOR FAIRFIELD'S PROPERTY ON FORT GEORGE ISLAND TO BE PLACED ON THE "CARL" LIST FOR PURCHASE BY THE STATE

— RECOMMENDATION BY THE DEPARTMENT OF THE INTERIOR THAT FT. GEO. IS. BE INCLUDED IN THE BARRIER ISLAND COMPLEX.

ALL OF THE ABOVE SHOWS THAT THE DEVELOPMENT OF THIS ISLAND IS NOT EVIDENT. WE THEREFORE RESPECTFULLY REQUEST THAT NO MENTION OF DEVELOPMENT BE ADDED TO THIS BILL.

SINCERELY,
FRIENDS OF FORT GEORGE ISLAND/INC
- BILLY
WILLIAM E. ARNOLD JR.
VICE PRESIDENT AND
SPORTSMAN

PLANNING DEPARTMENT

Office of the Director

September 8, 1987

Mr. William M. Peterson
General Manager
Fairfield Fort George Island
11241 Fort George Road, E.
P. O. Box 197
Jacksonville, Florida 32226

Dear Mr. Peterson:

Re: Fort George Island
Fairfield Communities, Inc.

In reply to your letter dated September 3, 1987 regarding the referenced item, please be advised that Fairfield Communities, Inc. notified the City of Jacksonville on September 3, 1987 that pursuant to the provision of paragraph II A.4. of the Amended Development Order (ADO), it was exercising its option of abandoning the development order.

All development approval granted pursuant to the Amended Development Order (ADO) was terminated according to the provisions thereof, including any provision for review and approval of specific resource management plans specified therein.

If there are any questions in regard to this matter, please do not hesitate to contact me at your convenience.

Sincerely,

W. Ray Newton
Director of Planning

WRN/ic

Suite 700, Florida Theatre Building, 128 East Forsyth Street
Jacksonville, Florida 32202-3325 Telephone (904) 630-1900

PLANNING DEPARTMENT

Office of the Director

September 3, 1987

Mr. John Radey
Acting Secretary
Florida Department of Community Affairs
% Aurell, Fons, Radey & Hinkle
Suite 1000, Monroe-Park Tower
101 North Monroe Street
P. O. Drawer 11307
Tallahassee, Florida 32307

Mr. James J. Catlette
Executive Director
Northeast Florida Regional Planning Council
8649 Baypine Road, Suite 110
Jacksonville, Florida 32216

Gentlemen:

Re: Ft. George Island DRI
Fairfield Communities, Inc.

Please be advised that Fairfield Communities, Inc. has notified the City of Jacksonville (see attached) that pursuant to the provisions of paragraph II.A.4. of the Amended Development Order (ADO), it is exercising its option of abandoning the development order.

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If there are any questions regarding this matter, please do not hesitate to contact me at your convenience.

Sincerely,

W. Ray Newton
Director of Planning

WRN/ic
attachment

cc: Florida Land and Water
Adjudicatory Commission

Robert W. Butterworth
Attorney General

Clarence J. Suggs
President, City Council

Weather: Another hot potato for couch potatoes. High 92, low 74. Details, page A-2. Sunday, September 13, 1987

The Orlando Sentinel

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Florida Edition

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The Orlando Sentinel

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JAMES P. TONER, *Associate Managing Editor*
MANNING PYNN, *Associate Managing Editor*

●

Deputy Managing Editors
GEORGE C. ROGERS III
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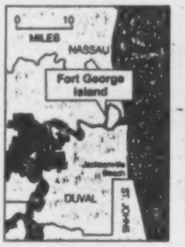
Oh, this isn't the first time someone has tried to develop Fort George Island. In 1975 the area planning board scotched a plan to build a mere 854 homes on the island. The board was rightly worried about the adequacy of the water supply and the effect of pollution from stormwater runoff on surrounding shellfish waters. That should have discouraged other developers and saved everyone a lot of grief.

But no, for the past six years the Arkansas-based company has been wrestling doggedly with environmental and citizen groups to win the right to shoehorn its huge resort into the 900-acre island.

Fairfield already has sunk about $13 million into the development and fought for it from Jacksonville to Tallahassee to Washington in myriad proceedings. Yet many issues, such as whether the development is subject to state review, still have to be hashed out.



It's easy to get distracted by the sheer complexity of what has happened over the past half-dozen years, including conflicts of interest and Fairfield's influence on compliant Jacksonville politicians. But the basic question hasn't changed: Should a major development be built on an environmentally vulnerable island whose water supply is so undependable? The answer still is no.

The company, which has a lot of financial problems, should cut its losses and pull out — particularly if the land can be bought for a park. The company, in fact, has not closed the door on the possibility of a private conservation group buying the land for eventual inclusion in a federal or state island preserve.

That possibility is improved by a bill now in Congress that could include Fort George Island in a proposed 35,800-acre preserve in the St. Johns River's salt marshes. And the state could add Fort George Island to its priority list for purchase under the Conservation and Recreational Lands Program.

Whatever route is taken, the destination should be to preserve Fort George Island intact before it turns into just one more place, like so many other places in Florida, that used to be nice.

. . . don't sweeten the deal

The least that government can do to prevent Fort George Island from being overrun by the huge new Fairfield Communities development is to refuse to subsidize it.

But unless Fort George is included on a list of protected barrier islands, as recommended by the U.S. Interior Department, it still would be eligible for federal money for roads, bridges, flood insurance and homeowner loans.

In effect, taxpayers could be asked to help foot the bill for developing the fragile island in the first place, and then for fixing it up if it got smashed by a colossal hurricane sometime down the line.

That's just the kind of insanity that the federal law on barrier islands — a critical line of defense against the sea — was designed to prevent. Congress should include Fort George on the list of islands that get no federal help.

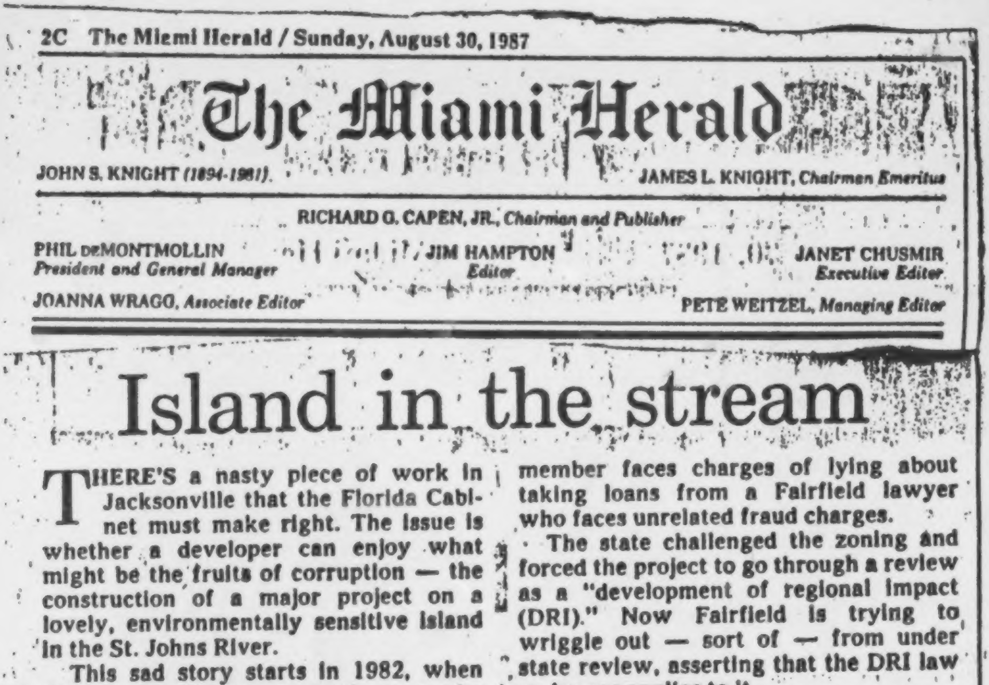
Listing the island also would drive up costs for the Fairfield development, perhaps enough to dampen the urge to build. Who would want to sink a lot of money into a house on a vulnerable coastal island if they couldn't get insurance? No one. And the taxpayers shouldn't be asked to take the risk for them.

Meanwhile, Gov. Bob Martinez and the Cabinet could keep the pressure on Fairfield by insisting that the state retain control over the development.

The company is pushing to have its fate decided by local officials more receptive to Fairfield's point of view rather than state environmental regulators.

It took heart with an opinion last month by John Radey, an independent attorney representing the state Department of Community Affairs in place of Secretary Thomas Pelham, formerly a lawyer for Fairfield. Mr. Radey said the company no longer has to abide by tough state requirements because the project has been scaled down. But his non-binding opinion has been challenged by Attorney General Bob Butterworth, who says the project does have to abide.

Unless the courts say otherwise, the state should refuse to give away the store by handing over its jurisdiction to local boosters.



2C The Miami Herald / Sunday, August 30, 1987

The Miami Herald

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Island in the stream

THERE'S a nasty piece of work in Jacksonville that the Florida Cabinet must make right. The issue is whether a developer can enjoy what might be the fruits of corruption — the construction of a major project on a lovely, environmentally sensitive island in the St. Johns River.

This sad story starts in 1982, when the Jacksonville City Council approved a resort development for Fort George Island. The island, about 1,000 acres, is much loved for its dense tree canopy. It now has a handful of homes, a state-owned historic plantation, and a bird sanctuary. It had been zoned for one home per 1.5 acres. The new zoning allowed Fairfield Communities to build 1,343 homes on 754 acres.

In its approval, the Jacksonville council permitted Fairfield to count in its plan 100 submerged acres — also claimed by the state — and tossed out environmental requirements suggested by a planning council. Now a Federal grand jury is investigating. The city council's staff director has been found guilty of lying about Fairfield influence on the council. A former city-council member faces charges of lying about taking loans from a Fairfield lawyer who faces unrelated fraud charges.

The state challenged the zoning and forced the project to go through a review as a "development of regional impact (DRI)." Now Fairfield is trying to wriggle out — sort of — from under state review, asserting that the DRI law no longer applies to it.

Yet Fairfield also claims that a Federal program for barrier islands also doesn't apply to the development, in part because it is a DRI. That program denies Federal subsidies for roads, utilities, and flood insurance on barrier islands.

Clearly the cabinet needs to make sense of this hash. The project cannot go forward until the submerged-land issue is settled. Fairfield cannot be allowed to claim exemptions from Federal restrictions by claiming state oversight that it also rejects.

Attorney General Bob Butterworth has been waging the fight for state control, and the cabinet should join him. The integrity of development in Florida must be defended, and with great vigor.

Salt found in Fort George wells; water rationing recommended

From staff

The city's Bio-Environmental Services Division has recommended mandatory water rationing on Fort George Island after tests showed high concentrations of saltwater in freshwater wells.

Water Conservation Manager Gary Weise said yesterday that he plans to meet with Health Department Director Dr. Patricia Cowdery today and recommend that a mandatory water shortage be declared.

Dr. Cowdery's recommendation would then be forwarded to Mayor Tommy Hazouri, who would have the final say before approval.

The water-quality tests were conducted on 23 wells and five of them had saltwater concentrations higher than the state's drinking water standards allow.

Two of the wells are owned by Fairfield Communities Inc., which is planning a 1,343-unit housing development on the island. The development's water supply will come from wells on the island.

Barrier to barrier island

Gov. Bob Martinez has advised the U.S. Interior Department that Fort George Island should not fall under a federal protection program for barrier islands because developers already have permission to build on the island.

In a letter Aug. 6 to Interior Secretary Donald Hodel, Martinez recommended that no islands with state approval for large developments as of Jan. 1 of this year be put on the department's special-protection list.

The department is soliciting comments on its proposal to add 286 islands to the Coastal Barrier Resource System.

Area digest

2 may leave city jobs

Dale Beerbower, Jacksonville's public safety director and Martha Barrett, the mayor's Washington liaison, are losing their jobs, sources said yesterday.

Beerbower was hired in 1984 to restore order to the troubled Public Safety Department, and Ms. Barrett was former Mayor Jake Godbold's press aide before becoming the Washington liaison under Mayor Tommy Hazouri.

Danny Lee, Hazouri's executive officer, would not confirm or deny that Beerbower and Ms. Barrett would be leaving their positions.

However, Lee did say that several changes will be made within the administration and "in some form or fashion, those two will be involved."

As public safety director, Beerbower oversees the city's fire and rescue, animal control, civil defense and public parking divisions.

Sources said that Beerbower will likely be moved to another department within the city and an attempt will be made to find Ms. Barrett another job within government, sources said.

Neither Beerbower nor Ms. Barrett are eligible to automatically revert to civil service jobs within the city because their complete city employment tenures have been in appointed positions.

THE FLORIDA TIMES-UNION TUESDAY, AUGUST 18, 1987

Martinez recommends exemption for island

By Frank LoMonte
Staff writer

Jacksonville's Fort George Island should not fall under a federal protection program for barrier islands because developers already have permission to build on the island, Gov. Bob Martinez has advised the U.S. Interior Department.

In an Aug. 6 letter to Interior Secretary Donald Hodel, Martinez recommended that no islands with state approval for large developments as of Jan. 1 of this year be put on the department's special-protection list.

The department is soliciting comments on its proposal to add 286 islands to the Coastal Barrier Resource System. The program was created in 1982 to give special protection to undeveloped coastal islands that have valuable natural resources.

Federal money cannot be used for roads and bridges in the protected areas and homeowners on the islands cannot get federal flood insurance or federally insured home loans, which could make building on those islands prohibitively expensive.

The agency plans to incorporate the comments from government officials into a final report to Congress, which will have the last word on which islands are included in the program. That report is expected to take four to five months.

Martinez based his recommendations on the advice of Thomas G. Pelham, head of the Florida Department of Community Affairs.

Pelham has disqualified himself from considering matters that involve Fort George because he was once a lawyer for Fairfield Communities Inc., which is planning a $200 million development on the island.

But in his recommendations, Pelham said all barrier islands that had gone through the Developments of Regional Impact (DRI) approval process by the start of this year should be exempted from consideration for the federal list.

That policy would cover Fairfield's project, which got a state development order in 1983 from the governor and Cabinet under the DRI review process. The DRI process regulates large developments that affect more than one county.

In fact, Fairfield lawyer William Hyde — who was once Pelham's law partner — used Pelham's recommended policy in a July 13 letter to Martinez as a basis for arguing that Fort George should be exempt from the federal designation.

"Fundamental fairness would seem to dictate" that Fort George not be put on the protected list if, as Pelham advised, other islands with state-approved construction plans are exempt, Hyde wrote.

Fairfield officials oppose adding the island to the protected list, fearing it would cloud their already controversial plans for developing the island. In support of their stance, they claim Fort George is not really a barrier island because Little Talbot Island separates it from the Atlantic Ocean.

Pelham has refused to comment on the development since he relinquished the case.

Ironically, Fairfield recently has gone through some complicated maneuvers trying to get out of the DRI process.

Lawyers for the Arkansas-based developer have drafted an ordinance for the Jacksonville City

(See MARTINEZ, Page B-3)

St Johns River
Mayport
Fort George Island

Mandatory water rationing suggested on Fort George

Tests show saltwater concentrations up

By Beverly Kennegy
Staff writer

City water conservation officials recommended mandatory water rationing on Fort George Island yesterday because of saltwater increases in the drinking water wells.

Water quality tests conducted by the city's Bio-Environmental Services Division showed that five of 23 wells tested had concentrations of salt water higher than the state's drinking water standards allow.

Two of the wells are owned by Fairfield Communities Inc., which is planning to build a 1,343-unit housing development on the island. The development's water supply will come from wells beneath the island.

Water Conservation Manager Gary Weise said yesterday that he planned to meet with Health Department Director Dr. Patricia Cowdery today and recommend that a mandatory water shortage be declared on the island.

Mrs. Cowdery's recommendation then would be forwarded to Mayor Tommy Hazouri, who would have the final say.

A mandatory water rationing designation would require island residents to reduce their water usage. They also may be required to install water meters, at their own expense, so the city could determine how much water was being used, Weise said.

The city has required voluntary water rationing in the past, but never mandatory rationing, Weise said.

Weise said that, during the past several years, the island's wells have experienced a 127 percent increase in salinity.

State drinking water standards allow up to 250 milligrams of salt per liter. Tests showed the wells measured at 290, 300, 330, 336 and 36 milligrams of salt. Another well measured at 260.

Two of the wells are owned by residents opposed to the housing development — Rhodes Gay, the president of the Friends of Fort George Island Inc., and William E. Arnold, the vice president of the organization. The remaining well is owned by Jerry Knauer.

The source of the problem, Weise said, is an anomaly beneath the island that was caused either by a sinkhole or fault. The continued pumping of water allows connate water — mineralized salt water trapped in the ground — to enter into the Floridan Aquifer and the island's drinking water wells.

(See WATER, Page B-3)

Water rationing recommended on island

(From Page B-1)

The largest consumer of the island's water is Fairfield, which uses well water to irrigate its 18-hole golf course.

Weise said that, as the pumping continues from the wells, the problem will get worse.

"No, its's not going to get any better," he said. "It's never been like this.

"This [anomaly] could spread to other areas of the county," Weise said, such as Mayport and Fairfield's drinking water wells. City officials have noticed that the anomaly has slowly traveled through the years in a southerly direction.

"It's [movement] is greater than we expected," Weise said.

Fairfield officials think their development will not be affected by the anomaly because the development will receive its drinking water from the middle zone of the Floridan Aquifer, 1,200 to 1,700 feet below ground. Most of the existing wells are in the upper zone of the aquifer, closer to the surface.

But as a precaution, Fairfield will be required by the St. Johns River Water Management District to install a monitoring well to determine if any salt has tainted its drinking water wells.

When the city rezoned Fairfield's property in 1982, Fairfield agreed that if its water use adversely affected the existing island's residents, it must reduce its usage or provide other mitigation.

Fairfield has been notified of the saltwater intrusion, but it has not reduced its water usage, Weise said.

Martinez urges Fort George protection exemption

(From Page B-1)

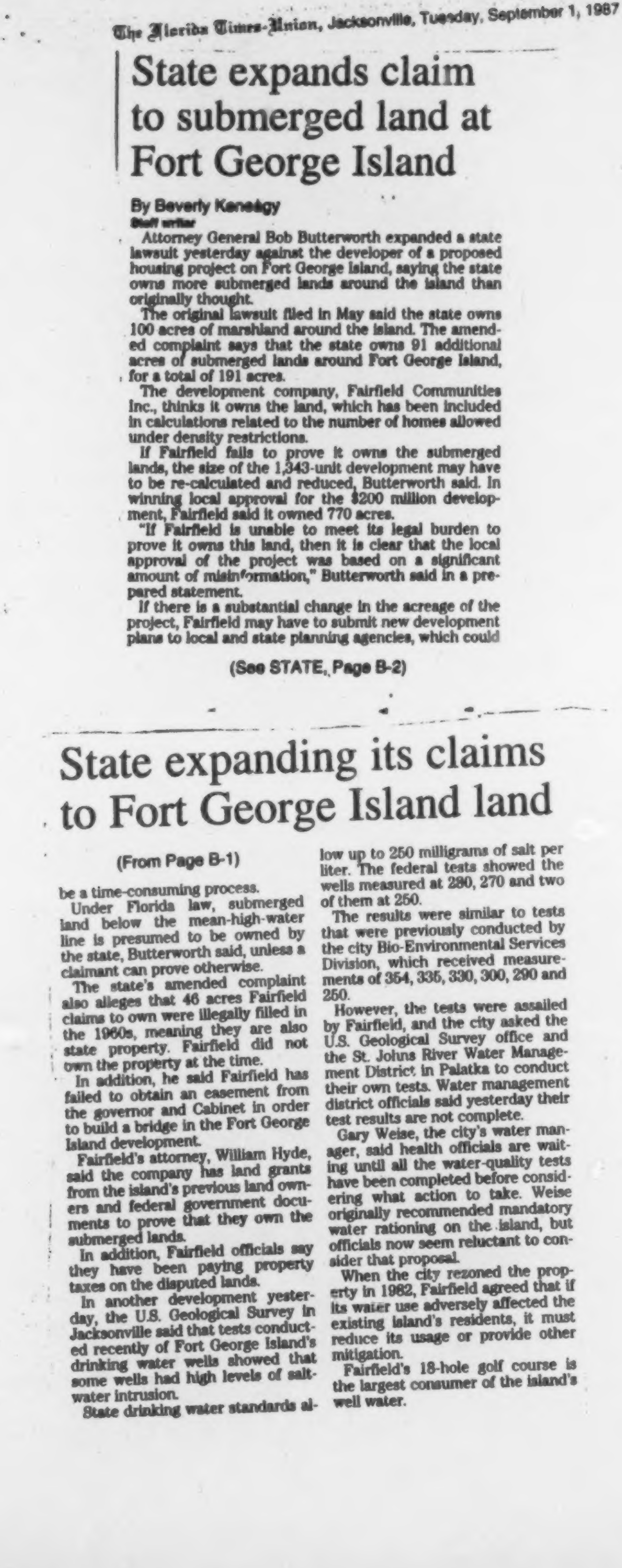
Council to consider that would take away state jurisdiction over the project and give it to the city, which has been more friendly to the development.

Hyde sent a letter to Attorney General Bob Butterworth on July 21 — eight days after he wrote the Martinez letter — saying that the Fort George project should no longer be considered a DRI because the 1986 Legislature changed the threshold for a project to meet that classification.

Butterworth released copies of both Hyde letters yesterday as part of a critical report on the Fairfield project that was sent to the governor and Cabinet members to update them on the issue.

In his letter, Butterworth — an outspoken critic of the Fairfield project — criticized Fairfield for trying to escape state review by flip-flopping on the question of whether its project is really a DRI.

He also said he thinks the developer will have to scale down the size of the 1,343-unit project unless it can be proven that Fairfield really owns 100 acres of disputed wetlands on the island. The state is fighting the developer in court over custody of that land.



The Florida Times-Union, Jacksonville, Tuesday, September 1, 1987

State expands claim to submerged land at Fort George Island

By Beverly Keneagy
Staff writer

Attorney General Bob Butterworth expanded a state lawsuit yesterday against the developer of a proposed housing project on Fort George Island, saying the state owns more submerged lands around the island than originally thought.

The original lawsuit filed in May said the state owns 100 acres of marshland around the island. The amended complaint says that the state owns 91 additional acres of submerged lands around Fort George Island, for a total of 191 acres.

The development company, Fairfield Communities Inc., thinks it owns the land, which has been included in calculations related to the number of homes allowed under density restrictions.

If Fairfield fails to prove it owns the submerged lands, the size of the 1,343-unit development may have to be re-calculated and reduced, Butterworth said. In winning local approval for the $200 million development, Fairfield said it owned 770 acres.

"If Fairfield is unable to meet its legal burden to prove it owns this land, then it is clear that the local approval of the project was based on a significant amount of misinformation," Butterworth said in a prepared statement.

If there is a substantial change in the acreage of the project, Fairfield may have to submit new development plans to local and state planning agencies, which could

(See STATE, Page B-2)

State expanding its claims to Fort George Island land

(From Page B-1)

be a time-consuming process.

Under Florida law, submerged land below the mean-high-water line is presumed to be owned by the state, Butterworth said, unless a claimant can prove otherwise.

The state's amended complaint also alleges that 46 acres Fairfield claims to own were illegally filled in the 1960s, meaning they are also state property. Fairfield did not own the property at the time.

In addition, he said Fairfield has failed to obtain an easement from the governor and Cabinet in order to build a bridge in the Fort George Island development.

Fairfield's attorney, William Hyde, said the company has land grants from the island's previous land owners and federal government documents to prove that they own the submerged lands.

In addition, Fairfield officials say they have been paying property taxes on the disputed lands.

In another development yesterday, the U.S. Geological Survey in Jacksonville said that tests conducted recently of Fort George Island's drinking water wells showed that some wells had high levels of saltwater intrusion.

State drinking water standards allow up to 250 milligrams of salt per liter. The federal tests showed the wells measured at 280, 270 and two of them at 250.

The results were similar to tests that were previously conducted by the city Bio-Environmental Services Division, which received measurements of 354, 335, 330, 300, 290 and 250.

However, the tests were assailed by Fairfield, and the city asked the U.S. Geological Survey office and the St. Johns River Water Management District in Palatka to conduct their own tests. Water management district officials said yesterday their test results are not complete.

Gary Weise, the city's water manager, said health officials are waiting until all the water-quality tests have been completed before considering what action to take. Weise originally recommended mandatory water rationing on the island, but officials now seem reluctant to consider that proposal.

When the city rezoned the property in 1982, Fairfield agreed that if its water use adversely affected the existing island's residents, it must reduce its usage or provide other mitigation.

Fairfield's 18-hole golf course is the largest consumer of the island's well water.

HOMESTEAD RESIDENTS OF FORT GEORGE ISLAND
Post Office Box 298
Fort George Island, Florida 32226

STEERING COMMITTEE

Janis Lampe
Jeannie Creech
George Register III
Sherman Baldwin, Jr.
Richard Stockstill

October 8, 1987

TO: The Honorable Chairman and Members of United States Senate Subcommittee on Public Lands, National Parks, and Forests

SUBJECT: HOUSE OF REPRESENTATIVES BILL H.R. 1983

Forwarded for your committee's information is the rationale which we have sent to our elected county officials to have H.R. 1983 deferred. We believe the bill as written does not provide protection for our county or county residents. The provisions of bill H.R. 1983 pertains to 35,800 acres all located within our county (Duval County, Florida). The questions of the cost to implement this bill and the effect on states rights are also questioned.

Sincerely,

Richard M. Stockstill

Richard M. Stockstill
Member
Homestead Residents of Fort George Island

RMS

Attachment: Letter, 6 October 1987 to Honorable Mayor Tommy Hazouri and Members of City Council

cc: Senator Robert Dole

HOMESTEAD RESIDENTS OF FORT GEORGE ISLAND
Post Office Box 298
Fort George Island, Florida 32226

STEERING COMMITTEE

Janis Lampe
Jeannie Creech
George Register III
Sherman Baldwin, Jr.
Richard Stockstill

October 6, 1987

TO: The Honorable Mayor Tommy Hazouri
and Members of the Jacksonville City Council

Dear Mayor and City Council Members:

A serious problem can develop within Duval County unless action is taken to have the Honorable Charles E. Bennett defer senate committee action on his well intentioned legislation pertaining to Duval County House of Representatives Bill H.R. 1983 (Attachment A). This action is advised in order for your staff to review the bill and make those proposed changes in the language which you feel would be necessary to protect the current and future interests of Duval County and county residents. We also recommend that the State Attorney General should render you an opinion on the effect of federal control being placed on Duval County environment, state and private land and historic resources already managed and protected by the State of Florida. Are we giving up more state rights via H.R. 1983? In any event, Duval County taxpayers should be notified and afforded the right in open hearings to consider any legislation - federal, state or local effecting their properties. Facts which support this concern follow:

A precedent has already been established. Last year a bill almost identical to H. R. 1983 was originated by Representative Bennett but this bill, H.R. 2483, in addition to Duval County's St. Johns River Valley acreage included the Nassau River valley acreage for a total of 80,000 acres. The bill (H.R. 2483) in its original version was opposed by Nassau County. Efforts by the sponsor to get Nassau County approval included assuring that language in the bill expressed congressional approval to allow commercial fishing in the area, the museum was removed from the bill and it was made clear that no uplands could be condemed -- only marshes. The Nassau Board of County Commissioners believed that the bill provided for unnessary federal controls and unnessary expenditures of taxpayers money. They also understood that if they did not submit a proposed draft of H.R. 2483 the bill would be passed regardless of their position. The Nassau County Board of Commissioner's letter forwarding the proposed draft of H.R. 2483 is enclosed (Attachment B). Some of the protective language and provisions deleted by the Nassau County draft are now contained in H.R. 1983. Also, some of the protective language and definitions added by the Nassau County draft does not appear in H.R. 1983.

The Director, National Park Service, Department of Interior stated before the Senate Subcommittee Hearings on H.R. 1983 that "We recommend that the bill not be enacted. We believe that conservation and protection of the resources in this bill should be a matter of state or local concern"......"We recommend that the state which already manages a 52,000 acre aquatic preserve in the St. Johns and Nassau River estuaries, undertake whatever conservation action may be appropriate"....."We have no estimate of the cost of acquiring the private land within the preserve proposed by H.R. 1983." The directors complete statement is enclosed (Attachment C).

Representative Bennett's remarks to the Senate Subcommittee Hearing are enclosed (Attachemnt D).

The map locating the 35,800 acres of the preserve as referenced in H.R. 1983 is not available locally. We have requested a copy for use and distribution from the National Park Service.

To the best of our knowledge the only formal opposition in Duval County to the language contained in bill H.R. 1983 was a petition sent to Representative Bennett on 10 June 1987 and signed by fifty-four (54) Duval County residents mostly from Fort George Island and Batten Island.

Recommendations:

1.) Actions recommended in the first paragraph above.

2.) Request an estimate of cost to implement and maintain provisions of H.R. 1983 initially and yearly by Duval County from state or federal sources.

3.) Request opinions on H.R. 1983 implementation from:

Florida Department of Natural Resources
Florida Department of Environmental Regulation
Florida Department of State Division of Historical Resources.

4.) Establish an oversight committee to review and report, via news media, the status of new or pending federal or state legislation having a direct effect on Duval County residents.

Sincerely,

Fred Lampe
Robert J. Creagh
Richard M. Stockstill

Homestead Resident's Members' of Fort George Island

RMS

Attachments (4):

A. H.R. 1983, 22 July 87
B. Letter, 22 July 86, Nassau County w/draft H.R. 2483
C. Statement, Director of National Park Service, at Senate Subcommittee 29 September 87
D. Statement, Representative Bennett, at Senate Subcommittee 29 September 87

City of Jacksonville
Office of the City Council
220 East Bay Street
Jacksonville, Florida 32202

October 16, 1987

Senator Dale Bumpers and Members
Chairman U.S. Senate Subcommittee on Energy and Natural Resources
Room 360, Dirksen Senate Office Building
Washington, D.C. 20515

RE: H.R. 1983

Dear Senator Bumpers:

At a public hearing before the Jacksonville City Council on Tuesday, October 13, 1987, a private homeowner, Mrs. Janis Lampe, requested our help to seek deferral on the Senate vote on Representative Charles E. Bennett's bill H.R. 1983 which passed the House of Representatives on July 21, 1987.

Mrs. Lampe's request for deferral was based on the fact that she and other homeowners were neither notified nor afforded a public hearing they could attend in order to find out in what, if any, way their property may be impacted by the inclusion in the Timucuan Ecological and Historic Preserve. Mrs. Lampe understands that her property cannot be taken nor acquired (other than Wetlands) without her consent, however, the bill directs the Secretary of the Interior to administer the Preserve under various Acts and laws generally applicable to units of the National Park System.

We the undersigned members of the Jacksonville City Council concur with Mrs. Lampe's request for deferral on a Senate vote and respectfully request a reasonable amount of time to review the bill to determine what, if any, affect the administration by the Secretary will have on Duval County properties.

cc: Congressman Charles E. Bennett
Senator Bob Graham
Senator Lawton Chiles

Terry Wood, President Pro-Tempore

Warren Jones
Warren Jones, Councilman, District 9

Richard H. Kravitz, District 4

E.D. Lee
E. Denise Lee, District 8

Joe Forshee
Joe Forshee, District 11

Ron Jenkins, District 5

Sylvia Thibault
Sylvia Webb Thibault, District 12

Ginny Myrick
Ginny Myrick, District 6

Senator Dale Bumpers and Members
U.S. Senate Subcommittee on Energy and Natural Resources
(Page 2)

Jacksonville City Council Members who concur with the request for a reasonable amount of time for local review of H.R. 1983, but, due to differing schedules were unable to sign this letter before its submittal in Washington, D.C.

Jim Wells	Jim Jarboe
Councilman-At-Large, Group 2	Councilman, District 3
(904) 630-1387	(904) 630-1386

HOMESTEAD RESIDENTS OF FORT GEORGE ISLAND
Post Office Box 298
Fort George Island, Florida 32226

'EERING COMMITTEE

Janis Lampe
Jeannie Creech
George Register, III
Sherman Baldwin, Jr.
Richard Stockstill

October 15, 1987

Councilman Matt Carlucci
10th Floor, City Hall Building
220 Bay Street
Jacksonville, Florida 32202

REFERENCES:
A.) Letter, 6 October 1987, from us to Mayor Hazouri and each City Council Member
B.) Telecon, 14 October 1987, with you about Reference A (H.R. 1983)

Dear Matt:

Since we last talked, additional public interest has been aroused by residents, not only on Fort George Island, but, on Batten Island, Black Hammock Island, and along the north bank of the St. Johns River covering the federal control being placed on 35,000 acres established by Representative Bennett's Bill H.R. 1983. The area is outlined on a Department of Interior map (NA-TEHP 80,003-A, July 1987) of Duval County, Florida. We received a copy from the Department of Interior on 14 October 1987 - the first time anyone in our area had seen it. (A copy is enclosed with this letter.) Residents, particularly those within the boundary of the preserve, are taking action to inform elected officials of their objection to being subject to federal controls without their knowledge.

Matt, you requested I provide our basic reasons for objecting to the language in H.R. 1983 and our request that Jacksonville/Duval County send a request to Representative Bennett and our senators to defer action on H.R. 1983 (this request was partially discussed and requested by Ms. Lampe at the 13 October 1987 Full Council Meeting). We give the following basic reasons:

1. Nassau County, in a letter to Representative Bennett (Attachment B to Reference A This Letter), stated why they could not accept this bill as written last year (H.R. 2483). The Nassau Board of County Commissioners, in the letter, submitted a draft proposal of his bill deleting harmful language and adding protective language. (Representative Bennett rejected this draft.)

   QUESTION: Why should Duval County accept H.R. 1983 that contains the language Nassau County deleted as harmful without a review and public hearing for Duval County residents, particularly those being within the federal controlled preserve?

2. The Director, National Park Service, Department of Interior, on 29 September 1987, testified on H.R. 1983 before the United States Senate Subcommittee on Public Lands, National Parks and Forests as to why the Department of Interior did not want H.R. 1983 enacted. Reasons included cost, land already protected by the state, etc. (Details included in Attachment C to Reference A This Letter).

Matt, these two reasons alone should prompt our requested action to have H.R. 1983 deferred for review, public hearing for language amendment to protect county rights, particularly those residents within the federal preserve established by H.R. 1983. Just compare language of Nassau County, H.R. 2483 Draft Bill, with language of H.R. 1983.

Sincerely,
Richard M. Stockstill
Richard M. Stockstill
Member
Homestead Residents of Fort George Island

RMS

Attachments:
Department of Interior Map of Duval County, Florida
"Timucuan Ecological and Historical Preserve"
NA-TEHP 80,003-A, July 1987

cc: City Councilmen:
Joe Forshee
E. Denise Lee
Terry Wood

FAIRFIELD
COMMUNITIES

October 15, 1987

Ms. Janis Lampe
10548 Fort George Road East
Jacksonville, Florida 32226

Dear Ms. Lampe:

Pursuant to our telephone conversation of today, I enclose a copy of the House Report language adopted by the House Committee on Interior and Insular Affairs in late June of this year. As you may know, the House Report does not carry the weight of statutory language in H.R. 1983 itself; however, it is generally considered by the agencies in determining the intent of Congress.

I am sorry that I was unable to offer you any definitive guidelines as to the impact which H.R. 1983 may have on landowners within the Fort George Island such as yourself. As I understand, neither Congressman Bennett nor a spokesman from the Department of Interior were able to answer your concerns, generally or specifically, as it related to egress and ingress through a natural preserve.

I am, by copy of this letter, requesting that Ms. Beth Norcross, staff member of the Senate Subcommittee on Public Lands - National Parks and Forests, contact you concerning your inquiries. Ms. Norcross' address and telephone number are 308 Dirksen Senate Office Building, Washington, D.C.; 202-224-7145.

On behalf of Fairfield we appreciate your concerns, many of which we mutually share. I feel certain that members of the above Committee would appreciate hearing from a landowner other than Fairfield or our opponents.

If I can be of further assistance, please advise.

Sincerely,

Joe T. Gunter
Senior Vice President
and Special Counsel

JTG:scb
Enclosures

cc: Beth Norcross ✓

Fairfield Communities, Inc. • 2800 Cantrell Road • P.O. Box 3375 • Little Rock, AR 72203 • (501) 664-6000

THE WILDERNESS SOCIETY

STATEMENT OF STEVEN C. WHITNEY, THE WILDERNESS SOCIETY, ON THE BILL H.R. 1983, BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SEPTEMBER 29, 1987.

My name is Steven C. Whitney and I serve as Director of the National Parks Program at The Wilderness Society. The Wilderness Society is a private, non-profit membership organization, dedicated to the wise use and protection of this nation's public lands. On behalf of our 192,000 members I would like to thank you for this opportunity.

I am also submitting this statement on behalf of American Rivers. American Rivers is a private, non-profit, membership organization, dedicated to the preservation of our great river resources. American Rivers has an active interest in southeastern coastal rivers and estuaries.

The legislation before you today would authorize the Secretary of Interior to preserve coastal wetlands and historic and prehistoric sites in the drainages of the St. Johns and Nassau Rivers in northeast Florida. I had the opportunity to field inspect the proposed preserve in June of this year and would like to express our full support for the creation of an ecological/historic preserve in this area.

However, during our review of the bill as passed by the House, we identified several weaknesses in H.R. 1983 that we would like to bring to the Subcommittee's attention. Our support for the preserve concept presented in the bill is unqualified. However, our support for the specific legislation before the Subcommittee today will be contingent on the adoption of strengthening amendments. If adopted, these amendments will:

* Recognize the estuarine wetland system as a component of, and functionally dependent upon, the upland drainage basin.

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- Ensure that the ecological preserve boundary is based upon the ecology of the area--not upon political jurisdictions.

- Grant the National Park Service adequate acquisition authority to ensure the protection of the natural and cultural features within the preserve should land uses be proposed that would compromise the integrity of those resources.

- Grant the National Park Service adequate regulatory authority to protect the resources entrusted to their care.

Mr. Chairman, the richest part of the coastal zone is the estuarine sector--the protected waters of the bays, sounds, lagoons, bayous, and tidal rivers. These productive natural systems serve as important nursery areas for fish and shellfish, as protective habitat for wildlife, as a natural assimilator and purifier of land runoff contaminants, as a natural buffer against shoreline erosion and storm floods for upland areas, and as an accessible aesthetic and recreational resource.

However, while H.R. 1983 recognizes these natural values of the Nassau/Saint Johns estuarine system through the creation of an ecological preserve, it fails to recognize the vulnerability of this system to degradation from external sources. Estuarine ecosystems extend landward to include any freshwater wetlands or upland watersheds which are a part of the hydrologic system that feeds the estuary. These watersheds provide water storage and control by absorbing heavy rainfall and slowly releasing the accumulation in surface and subsurface flow through floodplains, wetlands and ultimately into rivers that flow into the estuary. Disturbances of these shoreland watersheds that significantly affect the rate, timing, quality or quantity of runoff waters must be presumed to have the potential for adverse impacts on coastal estuaries.

Sources of such disturbance include both point sources such as sewage treatment plants and industrial discharges, and non-point sources such as runoff from urbanized areas, drainage from lands subject to timber harvesting, and agricultural drainwaters. Indeed, the watersheds draining into the Nassau and Saint Johns Rivers contain all of these potential sources of disturbance.

We recommend the Subcommittee amend H.R. 1983 to require the establishment of a multi-jurisdictional watershed management committee to develop and implement a comprehensive management plan to protect the natural values of the ecological preserve via sensitive and coordinated watershed management. We realize the establishment of such a multi-jurisdictional entity is not an easy task. However, we believe efforts to protect units of the National Park System deserve the very best creative and cooperative thinking no matter how difficult the task may seem.

We have also identified a weakness in the actual boundary of the proposed preserve. The northern boundary of the proposed preserve is coincident with the center line of the Nassau River which bisects the Nassau River wetland complex. As a result, if H.R. 1983 is enacted as proposed, the Park Service will be asked to preserve the ecological values of the riverine and coastal wetland system -- even though they only have jurisdiction to the center of the river.

We feel quite strongly that an ecological preserve must have boundaries based on the ecological system, not based on political jurisdictions. The boundary of the proposed preserve should be amended to include all of the wetlands associated with the Nassau River -- including those in Nassau County.

We also support the inclusion of Fort George Island within the preserve as in the House-passed bill. This beautiful island remains today much like it was when early explorers first came upon it. Indeed, several different historic themes are represented on the island. However, it is important to note that including Fort George Island in the Preserve will not necessarily ensure protection of the resources it contains.

Under Section 201(b) of H.R 1983, regarding acquisition, condemnation authority is limited only to wetlands. Therefore, even if a landowner was proposing a development that would decimate the integrity of an historic site on the uplands of Fort George Island, the Park Service would be virtually powerless to prevent it. We support condemnation authority for wetlands. However, we believe the bill should be amended to authorize condemnation of uplands when necessary to protect important resources within the preserve.

Finally, Section 201(c) provides for hunting and fishing within the boundaries of the preserve. As a rule, we do not support hunting in units of the park system set aside to protect the ecology of an area. We do not believe the taking of wildlife with firearms is consistent with the stated purposes of the preserve.

We urge the committee to remove the authorization for hunting. At a minimum, the Secretary should have the authority to designate zones where and periods when, the taking of wildlife may be prohibited for reasons of floral and faunal protection. As written, the bill limits the Secretary's authority to close areas to hunting only for reasons of public safety.

Fishing should be limited to sport fishing only and should be subject to necessary regulation to protect the resource. Commercial fishing should be prohibited. Resource consumptive commercial operations are not appropriate within units of the National Park System.

In conclusion, The Wilderness Society supports the creation of the Timucuan Ecological and Historic Preserve. However, we believe H.R. 1983 must be strengthened prior to passage as follows:

- The bill should require the creation of a multi-jurisdictional watershed management committee to develop a comprehensive management plan to protect the natural values of the preserve via sensitive management of the drainage basin -- including non-point and point source pollution control.
- The boundaries of the preserve should be amended to include the northern half of the Nassau River drainage within Nassau County. The existing boundary which runs down the center of the river is not based on the natural system and is therefore not supportable in light of the stated purposes of the preserve.
- Section 201(b) should be amended to provide condemnation authority for all lands within the preserve -- including uplands. Such authority is imperative if the National Park Service is to ensure protection of the resources this bill is intended to protect.
- Section 201(c) should be amended to allow sport fishing only to the extent the resource can support the use. Hunting should be prohibited. If hunting must be allowed, the Secretary needs the authority to close areas to hunting when necessary to protect flora and fauna.

Thank you for this opportunity to share our views with the Committee. We offer any assistance as consideration of H.R. 1983 continues.

Janis B. Lampe
10548 Fort George Road, E.
Jacksonville, Florida 32226

October 17, 1987

Senator Dale Bumpers
Chairman U.S. Senate Subcommittee
on Energy and Natural Resources
Room 360, Dirksen Senate Office Building
Washington, D.C. 20515

Re: H.R. 1983

Dear Senator Bumpers:

I am a private homeowner on Fort George Island who shall be impacted and shall suffer hardships if Congressman Bennett's bill H.R. 1983 is passed with its present wording.

I sought Congressman Bennett's help in answering the home owner's uncertainties on his bill, but he refused. He told us it's a good bill and it won't hurt us. The only assurance (in writing) that I and my neighbors have from Congressman Bennett states he "does not know of" any statute that would impact us. Like his Fort Caroline bill in 1950, properties "adjacent to" and "bordering" a National Park have benefited. Senator, we are in the middle of this preserve. Congressman Bennett does not know of any statute that would have an impact, yet I have verified through several phone calls to the Legislative Division of the Department of Interior, 2.

National Park Service, that if this bill passes with its existing language I shall be required to obtain a federal permit to continue the use of the current access road to my property.

Senator Chiles' aide, Ms. Ann Hardeman, returned my calls on Wednesday, October 14, 1987, and said there would be no impact on private properties. I requested a letter from the Senator assuring me of this. She said, "he won't do that, no one will." "Things could change." I have yet to hear from Senator Graham's office. When I called his Washington office, I left a message for Buddy Shorstein. Had Mr. Shorstein received my message, I know he would have called me. Today I left messages at the Tallahassee office and on his home telephone answering machine.

My only request has been for a deferral to obtain a reasonable amount of time for local review of the bill by our City Council where I and other homeowers would be able to attend and have some input on legislation impacting our homes. I resent having to take several days off work to make multiple long distance phone calls doing research that has proven I shall suffer hardships if this bill passes as written. I resent the negligence generated on the part of my Congressman and Senators' staffs for not thoroughly reviewing this legislation.

Congressman Bennett's bill is probably well intentioned, however, when these uncertainties were brought to his attention, a man of integrity would have offered to use his phones, postage and staff (at no personal expense to himself) to answer our concerns. I have always held Congressman Bennett in high regard. It saddens me that he seems to ~~no~~ longer care if people may suffer because he wants something.

I have enclosed a copy of a newspaper article from the October 16, 1987 edition of the Florida Times Union outlining some of our concerns and still unanswered questions.

Please help me. I wish I could afford to fly to Washington to meet with you and the members of the Subcommittee. I know you would recognize that we have valid concerns that should be addressed. We could support this bill if it contained protective language. I and other homeowners are not unreasonable people.

The treatment I have received in the past few weeks has made me feel helpless, frustrated and angry. I feel like Vladimir Slepak must have felt for the past seventeen (17) years, while precious seconds toward a Senate vote are slipping away.

I only want protection for my home, family and the liberties I now enjoy. What could be wrong with that?

I would appreciate any consideration you and the committee might give me in obtaining time to receive local review of this bill. I don't know who else I can go to for help before it is too late.

Sincerely yours,
Feris A. Lampe

Enclosure

FRIDAY, OCTOBER 16, 1987 THE FLORIDA TIMES-UNION

Metro/State

Residents fear restrictions from Fort George preserve bill

By Beverly Keneagy
Staff writer

Some Fort George Island residents are concerned that if their homes are included in a federal preserve, the government could place restrictions on the use of their properties.

The fears stem from a bill being sponsored by Rep. Charles Bennett, D-Fla., who wants to create a federal historical and ecological preserve in Duval County that would include Fort George Island.

If the bill remains as it is, the federal government could restrict the neighborhood's roadways and the size and color of the homes.

National Park Service officials said yesterday the government could impose some restrictions on the 21 homes on the island, but said they would probably be minimal.

That was not enough reassurance for Janis Lampe and a small group of residents on the island who call themselves the Homestead Residents of Fort George Island.

Mrs. Lampe said that if the proposed bill is passed, the narrow dirt road she uses to travel to and from her home would become federal parkland. She would then need a permit to use the road.

"There are more questions popping up that we don't have the answers to," she said.

The homestead group is asking Bennett to defer his bill, which passed the House unanimously July 21. The Jacksonville congressman said he will not delay the legislation, which is in a Senate committee.

"I want it deferred until it's further studied to show it protects the homeowners," Mrs. Lampe said.

The group formed several months ago to support a development plan by Fairfield Communities Inc., which wants to build 1,343 units on the island in Northeast Jacksonville. The group thinks Fairfield is proposing a planned development that would enhance the island.

On the opposite end is the Friends of Fort George Island, a group of island residents opposed to Fairfield's development but in favor of Bennett's bill. They think the island is too fragile to support a large development.

Bennett, in support of the Friends of Fort George Island, agreed several months ago to include the island into a bill he is sponsoring.

That bill would establish a 35,800-acre Timucuan Ecological and Historical Preserve in parts of the St. Johns and Nassau rivers by letting the federal government buy about

(See GROUP, Page B-4)

— B. Jack Lueders

Janis Lampe and her son, Charles, stroll down an access road leading to their Fort George Island h

Please see next page for valid concerns !!

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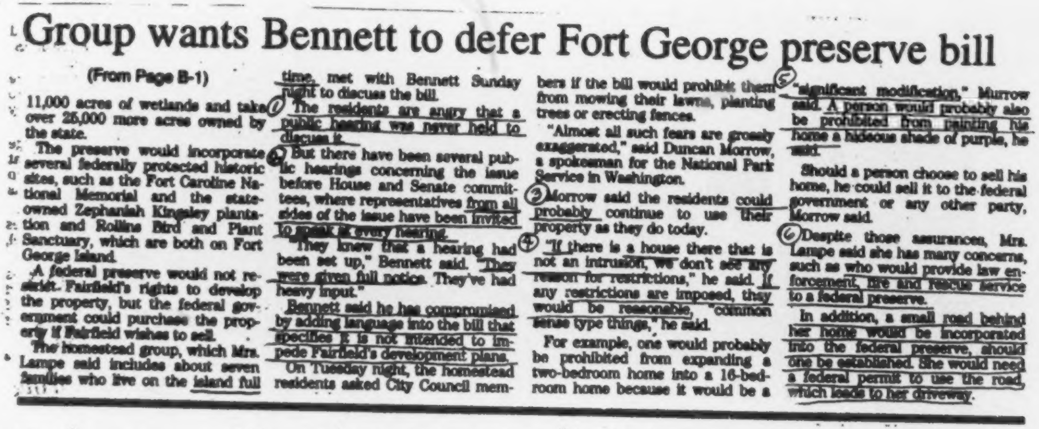

Group wants Bennett to defer Fort George preserve bill

(From Page B-1)

11,000 acres of wetlands and take over 25,000 more acres owned by the state.

The preserve would incorporate several federally protected historic sites, such as the Fort Caroline National Memorial and the state-owned Zephaniah Kingsley plantation and Rollins Bird and Plant Sanctuary, which are both on Fort George Island.

A federal preserve would not restrict Fairfield's rights to develop the property, but the federal government could purchase the property if Fairfield wishes to sell.

The homestead group, which Mrs. Lampe said includes about seven families who live on the island full time, met with Bennett Sunday night to discuss the bill.

① The residents are angry that a public hearing was never held to discuss it.

② But there have been several public hearings concerning the issue before House and Senate committees, where representatives from all sides of the issue have been invited to speak at every hearing.

"They knew that a hearing had been set up," Bennett said. "They were given full notice. They've had heavy input."

Bennett said he has compromised by adding language into the bill that specifies it is not intended to impede Fairfield's development plans.

On Tuesday night, the homestead residents asked City Council members if the bill would prohibit them from mowing their lawns, planting trees or erecting fences.

"Almost all such fears are grossly exaggerated," said Duncan Morrow, a spokesman for the National Park Service in Washington.

③ Morrow said the residents could probably continue to use their property as they do today.

④ "If there is a house there that is not an intrusion, we don't see any reason for restrictions," he said. If any restrictions are imposed, they would be reasonable, "common sense type things," he said.

For example, one would probably be prohibited from expanding a two-bedroom home into a 16-bedroom home because it would be a ⑤ "significant modification," Morrow said. A person would probably also be prohibited from painting his home a hideous shade of purple, he said.

Should a person choose to sell his home, he could sell it to the federal government or any other party, Morrow said.

⑥ Despite those assurances, Mrs. Lampe said she has many concerns, such as who would provide law enforcement, fire and rescue service to a federal preserve.

In addition, a small road behind her home would be incorporated into the federal preserve, should one be established. She would need a federal permit to use the road, which leads to her driveway.

1. We told Congressman Bennett we cannot afford to Jet Set to Washington for a Public Hearing. He told us "The Constitution of the United States does not grant you the right to a public hearing." "If we don't like his bill then we can try to kill it in the Senate." He will not request a deferral in order for local officials to study the impact on private property owners. "If the entire City of Jacksonville is 100% against his bill he would pass it anyway."

2. The only notification we had of the public Washington hearings were through our local newspapers. We were never invited to speak at anything.

3. I have verified through the Legislative Division of the Dept. of the Interior, National Park Service that since the road leading to my home is part of the Rollins Bird Sanctuary and the State of Florida intends to give their land holdings to the Federal Government. I shall be required to

(over)

obtain a Federal Permit for ingress and egress to my home.

④ What does the Government consider "an intrusion"?

⑤ What is a "significant modification"? Would I now be required to go through a Federal Permitting Process/Review for home improvements/modifications? Would I now be required to obtain a Federal Permit to paint in order to have color approval?

⑥ The Sheriff's Dept. is not allowed to enforce local ordinances and State codes on Federal lands. In the past, we have had problems with people coming onto the State Property getting drunk and disorderly, setting fires and exposing themselves indecently. Would our local police retain their rights of arrest once these properties are turned over to the Federal Government? Who shall become responsible for police, fire, rescue, sanitation and other City services.

Senator, we know we shall be impacted. We know we must have protective language written into the bill prior to passage to avoid the hardships it will create. If our local government had been allowed to conduct a review, that we were able to attend, these devastating effects could have been avoided. We respectfully request a reasonable amount of time to allow local City Government review. Thank you, Janis Lampe

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SENATE SUBCOMMITTEE ON ENERGY AND NATURAL RESOURCES, 308 DIRKSE
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SENATE BLDG RPT DLY MGM
CAPITOL ONE DC 20510

THE MEMBERS OF THE ORGANIZED FISHERMEN OF FLORIDA, ST JOHNS RIVER CHAPTER, RESPECTFULLY REQUEST A PUBLIC HEARING IN JACKSONVILLE FLORIDA ON BILL HR1983 BEFORE A FINAL SENATE VOTE IS TAKEN, THANKS FOR THIS CONSIDERATION.

ORGANIZED FISHERMEN OF FLORIDA, ST JOHNS RIVER CHAPTER, TERESA VAN GOIDTSNOVEN, SECRETARY
361 SOUTH FLETCHER AVE
FERNANDINA BEACH FL 32034

06:56 EST

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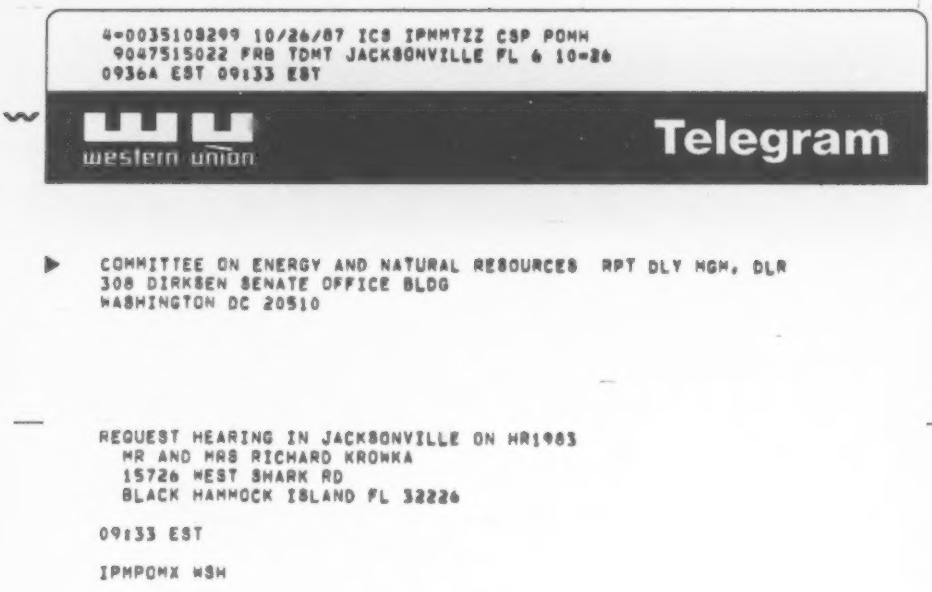

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COMMITTEE ON ENERGY AND NATURAL RESOURCES RPT DLY MGM, DLR
308 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

REQUEST HEARING IN JACKSONVILLE ON HR1983
MR AND MRS RICHARD KROWKA
15726 WEST SHARK RD
BLACK HAMMOCK ISLAND FL 32226

09:33 EST

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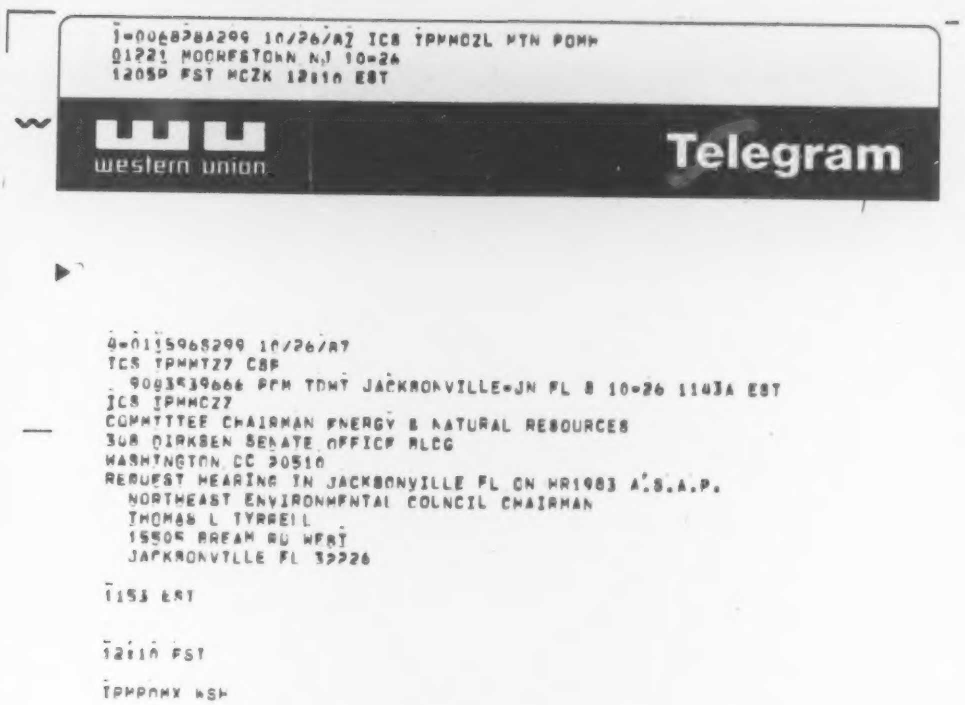

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COMMITTEE CHAIRMAN ENERGY & NATURAL RESOURCES
308 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510
REQUEST HEARING IN JACKSONVILLE FL ON HR1983 A.S.A.P.
  NORTHEAST ENVIRONMENTAL COUNCIL CHAIRMAN
  THOMAS L TYRRELL
  15505 BREAM RD WEST
  JACKSONVILLE FL 32226

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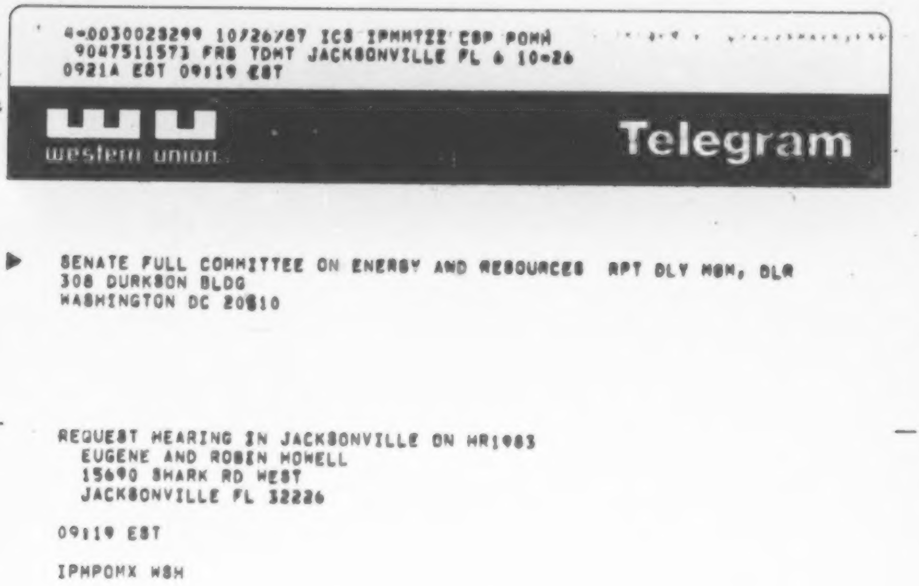

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Telegram

SENATE FULL COMMITTEE ON ENERGY AND RESOURCES RPT DLY MGM, DLR
308 DURKSON BLDG
WASHINGTON DC 20510

REQUEST HEARING IN JACKSONVILLE ON HR1983
EUGENE AND ROBIN HOWELL
15690 SHARK RD WEST
JACKSONVILLE FL 32226

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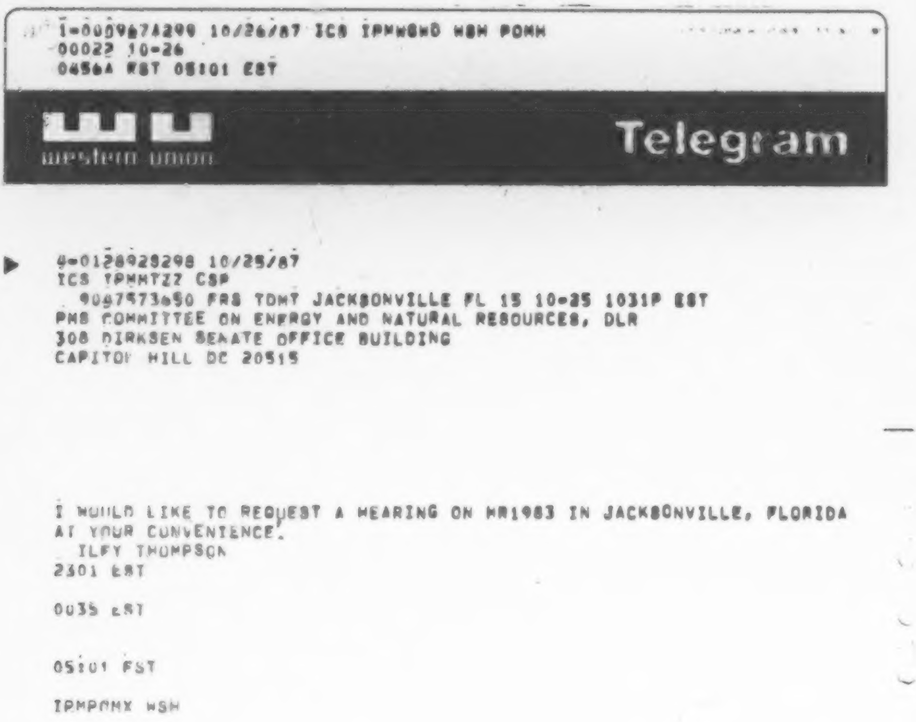

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PMS COMMITTEE ON ENERGY AND NATURAL RESOURCES, DLR
308 DIRKSEN SENATE OFFICE BUILDING
CAPITOL HILL DC 20515

I WOULD LIKE TO REQUEST A HEARING ON HR1983 IN JACKSONVILLE, FLORIDA AT YOUR CONVENIENCE.
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